

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 335

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[Originating in the Select Committee on Tax Reform;
reported on March 16, 2017]

1 A BILL to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended; to amend
2 said code by adding thereto a new section, designated §8-13C-15; to amend said code
3 by adding thereto two new sections, designated §11-13A-26 and §11-13A-27; to amend
4 said code by adding thereto a new article, designated §11-13DD-1, §11-13DD-2, §11-
5 13DD-3 and §11-13DD-4; to amend said code by adding thereto a new article, designated
6 §11-13EE-1, §11-13EE-2, §11-13EE-3 and §11-13EE-4; to amend said code by adding
7 thereto a new section, designated §11-15-34; to amend said code by adding thereto a
8 new section, designated §11-15A-30; to amend said code by adding thereto a new article,
9 designated §11-15C-1, §11-15C-2, §11-15C-3, §11-15C-4, §11-15C-5, §11-15C-6, §11-
10 15C-7, §11-15C-8, §11-15C-9, §11-15C-10, §11-15C-11, §11-15C-12, §11-15C-13, §11-
11 15C-14, §11-15C-15, §11-15C-16, §11-15C-17, §11-15C-18, §11-15C-19, §11-15C-20,
12 §11-15C-21, §11-15C-22, §11-15C-23, §11-15C-24, §11-15C-25, §11-15C-26 and §11-
13 15C-27; to amend and reenact §11-16-13 of said code; to amend and reenact §11-17-4b
14 of said code; to amend and reenact §11-19-1 and §11-19-2 of said code; to amend said
15 code by adding thereto a new section, designated §11-21-4g; to amend and reenact §11-
16 21-8a of said code; to amend and reenact §11-21-12 of said code; to amend and reenact
17 §11-24-4 of said code; to amend and reenact §11-24-23a of said code; and to amend and
18 reenact §60-3A-17 of said code, all relating generally to creating the 2017 Tax Reform
19 Act; preserving the municipal sales and use taxes; contingently reducing the rate of the
20 severance tax on certain natural resource production; prospectively balancing of the rate
21 of the severance tax on the production of coal; providing a refundable credit based on the
22 earned income of low-income workers; providing a refundable credit based on the fixed
23 income of low-income senior citizens; prospectively repealing the consumers sales and
24 service tax and the use tax; prospectively increasing the rates of tax on sales of non-
25 intoxicating beer; prospectively repealing the excise tax on e-cigarette liquids;
26 prospectively increasing the rate of tax on sales of soft drinks; reducing, making uniform,

27 contingently phasing down the rate of, and ultimately repealing, the personal income tax;
28 prospectively increasing the personal income tax credit for qualified rehabilitated building
29 investments; prospectively exempting from the personal income tax all social security
30 retirement, survivors' and disability income, and all retirement income for military service;
31 contingently phasing down the rate of, and ultimately repealing, the corporation net income
32 tax; prospectively increasing the corporation net income tax credit for qualified
33 rehabilitated building investments; prospectively increasing the state's profits on
34 wholesale liquor sales and enacting the revised sales, service and use tax law; making
35 findings; defining terms; imposing the tax; authorizing exemptions; providing compliance
36 procedures; dedicating portions of the revenue; and establishing effective dates with
37 respect thereto.

Be it enacted by the Legislature of West Virginia:

1 That §8-1-5a of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; that said code be amended by adding thereto a new section, designated §8-13C-15;
3 that said code be amended by adding thereto two new sections, designated §11-13A-26 and §11-
4 13A-27; that said code be amended by adding thereto a new article, designated §11-13DD-1,
5 §11-13DD-2, §11-13DD-3 and §11-13DD-4; that said code be amended by adding thereto a new
6 article, designated §11-13EE-1, §11-13EE-2, §11-13EE-3 and §11-13EE-4; that said code be
7 amended by adding thereto a new section, designated §11-15-34; that said code be amended by
8 adding thereto a new section, designated §11-15A-30; that said code be amended by adding
9 thereto a new article, designated §11-15C-1, §11-15C-2, §11-15C-3, §11-15C-4, §11-15C-5,
10 §11-15C-6, §11-15C-7, §11-15C-8, §11-15C-9, §11-15C-10, §11-15C-11, §11-15C-12, §11-15C-
11 13, §11-15C-14, §11-15C-15, §11-15C-16, §11-15C-17, §11-15C-18, §11-15C-19, §11-15C-20,
12 §11-15C-21, §11-15C-22, §11-15C-23, §11-15C-24, §11-15C-25, §11-15C-26 and §11-15C-27;
13 that §11-16-13 of said code be amended and reenacted; that §11-17-4b of said code be amended
14 and reenacted; that §11-19-1 and §11-19-2 be amended and reenacted; that said code be

15 amended by adding thereto a new section, designated §11-21-4g; that §11-21-8a of said code be
16 amended and reenacted; that §11-21-12 of said code be amended and reenacted; that §11-24-4
17 of said code be amended and reenacted; that §11-24-23a of said code be amended and
18 reenacted; and that §60-3A-17 of said code be amended and reenacted, all to read as follows:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS; CONSTRUCTION.

§8-1-5a. Municipal Home Rule Pilot Program.

1 (a) *Legislative findings.* -- The Legislature finds and declares that:

2 (1) The initial Municipal Home Rule Pilot Program brought innovative results, including
3 novel municipal ideas that became municipal ordinances which later resulted in new statewide
4 statutes;

5 (2) The initial Municipal Home Rule Pilot Program also brought novel municipal ideas that
6 resulted in court challenges against some of the participating municipalities;

7 (3) The Municipal Home Rule Board was an essential part of the initial Municipal Home
8 Rule Pilot Program, but it lacked some needed powers and duties;

9 (4) Municipalities still face challenges delivering services required by federal and state law
10 or demanded by their constituents;

11 (5) Municipalities are sometimes restrained by state statutes, policies and rules that
12 challenge their ability to carry out their duties and responsibilities in a cost-effective, efficient and
13 timely manner;

14 (6) Continuing the Municipal Home Rule Pilot Program is in the public interest; and

15 (7) Increasing the powers and duties of the Municipal Home Rule Board will enhance the
16 Municipal Home Rule Pilot Program.

17 (b) *Continuance of pilot program.* -- The Municipal Home Rule Pilot Program is continued

18 until July 1, 2019. The ordinances enacted by the participating municipalities pursuant to the I
19 Municipal Home Rule Pilot Program may remain in effect, subject to the requirements of this
20 section, until the ordinances are repealed: *Provided*, That any ordinance enacting a municipal
21 occupation tax is hereby null and void.

22 (c) *Authorizing participation.* --

23 (1) Commencing July 1, 2015, thirty Class I, Class II and Class III municipalities and four
24 Class IV municipalities that are current in payment of all state fees may participate in the Municipal
25 Home Rule Pilot Program pursuant to the provisions of this section.

26 (2) The municipalities participating in the pilot program on the effective date of the
27 amendment and reenactment of this section are hereby authorized to continue in the pilot
28 program, subject to the requirements of this section, and may amend current written plans and/or
29 submit new written plans in accordance with the provisions of this section.

30 (d) *Municipal Home Rule Board.* -- The Municipal Home Rule Board is hereby continued.
31 Effective July 1, 2015, the Municipal Home Rule Board shall consist of the following five voting
32 members:

33 (1) The Governor, or a designee, who shall serve as chair;

34 (2) The Executive Director of the West Virginia Development Office, or a designee;

35 (3) One member representing the Business and Industry Council, appointed by the
36 Governor with the advice and consent of the Senate;

37 (4) One member representing the largest labor organization in the state, appointed by the
38 Governor with the advice and consent of the Senate; and

39 (5) One member representing the West Virginia Chapter of the American Institute of
40 Certified Planners, appointed by the Governor with the advice and consent of the Senate.

41 The Chair of the Senate Committee on Government Organization and the Chair of the
42 House Committee on Government Organization shall continue to be ex officio nonvoting members
43 of the board.

44 (e) *Board's powers and duties.* -- The Municipal Home Rule Board has the following
45 powers and duties:

46 (1) Review, evaluate, make recommendations and approve or reject, by a majority vote of
47 the board, each aspect of the written plan submitted by a municipality;

48 (2) By a majority vote of the board, select, based on the municipality's written plan, new
49 Class I, Class II, Class III and/or Class IV municipalities to participate in the Municipal Home Rule
50 Pilot Program;

51 (3) Review, evaluate, make recommendations and approve or reject, by a majority vote of
52 the board, the amendments to the written plans submitted by municipalities;

53 (4) Consult with any agency affected by the written plans or the amendments to the written
54 plans; and

55 (5) Perform any other powers or duties necessary to effectuate the provisions of this
56 section.

57 (f) *Written plan.* -- Any Class I, Class II, Class III or Class IV municipality desiring to
58 participate in the Municipal Home Rule Pilot Program shall submit a written plan to the board
59 stating in detail the following:

60 (1) The specific laws, acts, resolutions, policies, rules or regulations which prevent the
61 municipality from carrying out its duties in the most cost-efficient, effective and timely manner;

62 (2) The problems created by the laws, acts, resolutions, policies, rules or regulations;

63 (3) The proposed solutions to the problems, including all proposed changes to ordinances,
64 acts, resolutions, rules and regulations: *Provided*, That the specific municipal ordinance instituting
65 the solution does not have to be included in the written plan; and

66 (4) A written opinion, by an attorney licensed to practice in West Virginia, stating that the
67 proposed written plan does not violate the provisions of this section.

68 (g) *Public hearing on written plan.* -- Prior to submitting its written plan to the board, the
69 municipality shall:

- 70 (1) Hold a public hearing on the written plan;
- 71 (2) Provide notice at least thirty days prior to the public hearing by a Class II legal
72 advertisement;
- 73 (3) Make a copy of the written plan available for public inspection at least thirty days prior
74 to the public hearing; and
- 75 (4) After the public hearing, adopt an ordinance authorizing the municipality to submit a
76 written plan to the Municipal Home Rule Board after the proposed ordinance has been read two
77 times.
- 78 (h) *Selection of municipalities.* -- On or after June 1, 2015, by a majority vote, the Municipal
79 Home Rule Board may select from the municipalities that submitted written plans and were
80 approved by the board by majority vote, new Class I, Class II, Class III and/or Class IV
81 municipalities to participate in the Municipal Home Rule Pilot Program.
- 82 (i) *Powers and duties of municipalities.* -- The municipalities participating in the Municipal
83 Home Rule Pilot Program have the authority to pass an ordinance, act, resolution, rule or
84 regulation, under the provisions of this section, that is not contrary to:
- 85 (1) Environmental law;
- 86 (2) Laws governing bidding on government construction and other contracts;
- 87 (3) The Freedom of Information Act;
- 88 (4) The Open Governmental Proceedings Act;
- 89 (5) Laws governing wages for construction of public improvements;
- 90 (6) The provisions of this section;
- 91 (7) The provisions of section five-a, article twelve of this chapter;
- 92 (8) The municipality's written plan;
- 93 (9) The Constitution of the United States or the Constitution of the state of West Virginia;
- 94 (10) Federal law or crimes and punishment;
- 95 (11) Chapters sixty-a, sixty-one and sixty-two of this code or state crimes and punishment;

96 (12) Laws governing pensions or retirement plans;

97 (13) Laws governing annexation;

98 (14) Laws governing taxation: *Provided*, That a participating municipality may enact a
99 municipal sales tax up to one percent if it reduces or eliminates its municipal business and
100 occupation tax: *Provided, however*, That if a municipality subsequently reinstates or raises the
101 municipal business and occupation tax it previously reduced or eliminated under the Municipal
102 Home Rule Pilot Program, it shall eliminate the municipal sales tax enacted under the Municipal
103 Home Rule Pilot Program: *Provided further*, That, for periods prior to October 1, 2017, any
104 municipality that imposes a municipal sales tax pursuant to this section shall use the services of
105 the Tax Commissioner to administer, enforce and collect the tax in the same manner as the state
106 consumers sales and service tax and use tax under the provisions of articles fifteen, fifteen-a
107 and fifteen-b, chapter eleven of this code and all applicable provisions of the Streamlined Sales
108 and Use Tax Agreement: And provided further, That on and after October 1, 2017, any
109 municipality that imposes a municipal sales tax pursuant to this section, shall use the services of
110 the Tax Commissioner to administer, enforce and collect the tax in the same manner as the
111 revised sales, service and use tax, including use of the same definitions, base of tax and
112 exemptions, as provided in articles fifteen-b and fifteen-c, chapter eleven of this code and in all
113 applicable provisions of the Streamlined Sales and Use Tax Agreement: *And provided further*,
114 That such municipal tax will not apply to the sale of motor fuel or motor vehicles;

115 (15) Laws governing tax increment financing;

116 (16) Laws governing extraction of natural resources; and

117 (17) Marriage and divorce laws.

118 (j) Municipalities may not pass an ordinance, act, resolution, rule or regulation under the
119 provisions of this section that:

120 (1) Affects persons or property outside the boundaries of the municipality: *Provided*, That
121 this prohibition under the Municipal Home Rule Pilot Program does not limit a municipality's

122 powers outside its boundary lines under other provisions of this section, other sections of this
123 chapter, other chapters of this code or court decisions; or

124 (2) Enacts an occupation tax, fee or assessment payable by a nonresident of a
125 municipality.

126 (k) *Amendments to written plans.* -- A municipality participating in the Municipal Home
127 Rule Pilot Program may amend its written plan at any time.

128 (l) *Amendments to ordinances, acts, resolutions, rules or regulations.* -- A municipality
129 participating in the Municipal Home Rule Pilot Program may amend any ordinance, act, resolution,
130 rule or regulation enacted pursuant to the municipality's approved written plan at any time so long
131 as any amendment is consistent with the municipality's approved written plan, complies with the
132 provisions of subsections (i) and (j) of this section, and the municipality complies with all applicable
133 state law procedures for enacting municipal legislation.

134 (m) *Reporting requirements.* -- Commencing December 1, 2015, and each year thereafter,
135 each participating municipality shall give a progress report to the Municipal Home Rule Board and
136 commencing January 1, 2016, and each year thereafter, the Municipal Home Rule Board shall
137 give a summary report of all the participating municipalities to the Joint Committee on Government
138 and Finance.

139 (n) *Termination of the pilot program.* -- The Municipal Home Rule Pilot Program terminates
140 on July 1, 2019. An ordinance, act, resolution, rule or regulation enacted by a participating
141 municipality under the provisions of this section during the period of the Municipal Home Rule
142 Pilot Program shall continue in full force and effect until repealed.

143 (o) Notwithstanding any other provision of this code to the contrary, on and after the
144 effective date of the enactment of this provision in 2015, no distributee under the provisions of
145 this section may seek from the Tax Division of the Department of Revenue a refund of revenues
146 or moneys collected by, or remitted to, the Tax Division of the Department of Revenue, nor seek
147 a change in past amounts distributed, or any other retrospective adjustment relating to any

148 amount distributed, to the extent that the moneys in question have been distributed to another
149 distributee, regardless of whether those distributions were miscalculated, mistaken, erroneous,
150 misdirected or otherwise inaccurate or incorrect. For purposes of this section, the term
151 "distributee" means any municipality that receives or is authorized to receive a specific distribution
152 of revenues or moneys collected by, or remitted to, the Tax Division of the Department of Revenue
153 pursuant to this section.

**ARTICLE 13C. MUNICIPAL TAX IN LIEU OF BUSINESS AND OCCUPATION TAX;
AND MUNICIPAL TAXES APPLICABLE TO PENSION FUNDS; ADDITIONAL
AUTHORITIES RELATING TO PENSIONS AND BOND ISSUANCE.**

**§8-13C-15. Municipal sales and service tax and municipal use tax preserved upon
enactment of the revised sales, service and use tax.**

1 On and after October 1, 2017, any municipality that, before that date, imposed a municipal
2 sales and service tax and a municipal use tax pursuant to this article, shall have the authority to
3 continue such taxes: *Provided*, that, as a condition to continuing such tax, the municipality shall
4 use the services of the Tax Commissioner to administer, enforce and collect the said taxes in the
5 same manner as the revised sales, service and use tax, including use of the same definitions,
6 base of tax and exemptions, as provided in articles fifteen-b and fifteen-c, chapter eleven of this
7 code and in all applicable provisions of the Streamlined Sales and Use Tax Agreement.

CHAPTER 11. TAXATION

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX.

§11-13A-26. Contingent reduction of tax rate on production of certain natural resources.

1 Notwithstanding anything contained in this article to the contrary, for all tax periods
2 beginning on and after January 1, 2018, the tax imposed under this article in the year 2017, on
3 the production of all natural resources except coal, at the rate of five percent, shall be reduced by
4 one percentage point for each of two successive years: *Provided*, That as a condition precedent

5 to each such reduction in any tax year, the rate of the corporation net income tax imposed
6 pursuant to article twenty-four of this chapter, for the tax year immediately preceding such year,
7 shall be zero percent.

§11-13A-27. Prospective balancing of tax rate on coal production.

1 (a) Notwithstanding anything contained in this article to the contrary, the tax on the
2 production of coal under section three of this article shall, from the effective date of this section,
3 be imposed at the following rates:

4 (1) For coal mined by underground methods from seams with an average thickness of less
5 than forty-five inches, two and one half percent of the gross value of the coal produced, as shown
6 by the gross income derived from the sale thereof by the producer on or after July 1, 2017. The
7 seam thickness shall be based on the weighted average isopach mapping of actual coal thickness
8 by mine as certified by a professional engineer;

9 (2) For all other coal production subject to the tax imposed under section three of this
10 article,

11 (A) Three and three-quarters percent of the gross value of the coal produced, as shown
12 by the gross income derived from the sale or furnishing thereof by the producer for the period
13 from July 1, 2017 through June 30, 2018; and

14 (B) Two and one-half percent of the gross value of the coal produced, as shown by the
15 gross income derived from the sale or furnishing thereof by the producer for periods starting on
16 or after July 1, 2018.

17 (3) In the case of all coal production, the applicable rate of tax includes the thirty-five one
18 hundredths of one percent additional severance tax on coal imposed by the state for the benefit
19 of counties and municipalities as provided in section six of this article.

20 (b) Effective date. – Notwithstanding any other sections of this article, this section shall
21 apply to gross proceeds derived from the production of coal beginning on July 1, 2017. The
22 language of section three of this article, as in effect on the passage of the bill enacting this section

23 in the year 2017, shall apply to gross proceeds derived from the production of coal prior to July 1,
24 2017, and, with respect to such gross proceeds, shall be fully and completely preserved.

ARTICLE 13DD. EARNED INCOME CREDIT.

§11-13DD-1. Earned income credit for low income workers.

1 For the tax years beginning on or after the first day of January of the first year following
2 the year in which the voters ratify the Fair and Simple Tax Reform Amendment to the constitution
3 of this state, any resident of this state who is a low income worker, and who has reported earned
4 income on his or her federal income tax return for that year of more than one thousand dollars
5 but less than twenty thousand dollars, shall be allowed a credit equal to the adjusted credit amount
6 determined in this article.

§11-13DD-2. Procedure for claiming credit; Limitation of amount paid.

1 (a) The credit available under this article shall be claimed each year, and payment of the
2 same requested by a low-income worker, by filing, within ninety days following the filing of his or
3 her federal income tax return for the year, a claim for credit on forms furnished by the state Tax
4 Commissioner who shall process a requisition for remittance by the State Treasurer, from the
5 State Maintenance of Efforts Fund dedicated to the Temporary Assistance of Needy Families
6 program, of the correct amounts of credit shown on properly completed and filed claims, within
7 the same time and according to the same procedures, including the payment of applicable
8 interest, as provided in §11-10-14c of this code for refunds of personal income tax.

9 (b) No person may receive a credit pursuant to this section in excess of \$200: *Provided,*
10 That any person entitled to the credit against personal income tax authorized in section twenty-
11 two of article twenty-one of this chapter, may also receive the credit authorized by this article.
12 The maximum amount of the credit authorized by this article shall be reviewed annually by the
13 Legislature to determine if an adjustment is necessary.

14 (c) Due to the administrative cost of processing, the credit authorized by this section may
15 not be paid if the amount of the credit is determined to be less than \$10.

§11-13DD-3. Definitions.

1 (a) For the purposes of this article, the term “adjusted credit amount” shall mean the
2 amount which is equal to ten percent of the amount of credit the person is allowed to claim as an
3 earned income tax credit against federal income tax pursuant to 26 U.S.C. §32, but reduced by
4 four percent of that amount for every one percentage point by which such person’s adjusted gross
5 income exceeds one hundred twenty-five percent of the federal poverty guideline applicable to
6 such person as provided in this section.

7 (b) For the purposes of this article, the terms “adjusted gross income” and “earned
8 income” shall have the meaning of those terms used in the Internal Revenue Code.

9 (c) For the purposes of this article, the term “low income” means federal adjusted gross
10 income for the tax year that is one hundred fifty percent or less of the federal poverty guideline
11 for the year, based upon the number of individuals in the family unit of which the low income
12 worker is a member, all as determined annually by the United States Secretary of Health and
13 Human Services.

14 (d) For the purposes of this article, the term “low income worker” means a resident of this
15 state whose federal adjusted gross income for the tax year meets the definition of “low income”
16 as defined in this section, and who has reported earned income on his or her federal income tax
17 return for that year: *Provided*, That for all purposes of this article, the term “low income worker”
18 shall also mean and include, as one person, those individuals who file joint federal income tax
19 returns with their spouses.

§11-13DD-4. Effective date.

1 This article shall take effect on the first day of January of the first year after the year in
2 which the voters ratify the Fair and Simple Tax Reform Amendment to the constitution of this
3 state.

ARTICLE 13EE. FIXED INCOME CREDIT.

§11-13EE-1 Fixed income credit for low income senior citizens.

1 For the tax years beginning on or after the first day of January of the first year following
2 the year in which the voters ratify the Fair and Simple Tax Reform Amendment to the constitution
3 of this state, any resident of this state who is a low income senior citizen, and who has reported
4 fixed income on his or her federal income tax return for that year of more than one thousand
5 dollars but less than twenty thousand dollars shall be allowed a credit equal to the adjusted credit
6 amount determined in this article.

§11-13EE-2. Procedure for claiming credit; Limitation of amount paid.

1 (a) The credit available under this article may be claimed each year, and payment of the
2 same requested by a low-income senior citizen, by filing, within ninety days following the filing of
3 his or her federal income tax return for the year, a claim for credit on forms furnished by the state
4 Tax Commissioner who shall process a requisition for remittance by the State Treasurer of the
5 correct amounts of credit shown on properly completed and filed claims within the same time and
6 according to the same procedures, including the payment of applicable interest, as provided in
7 §11-10-14c of this code for refunds of personal income tax.

8 (b) No person may receive a credit pursuant to this section in excess of \$200: *Provided,*
9 That any person entitled to the credit against personal income tax authorized in section twenty-
10 two of article twenty-one of this chapter, may also receive the credit authorized by this article.
11 The maximum amount of the credit authorized by this article shall be reviewed annually by the
12 Legislature to determine if an adjustment is necessary.

13 (c) Due to the administrative cost of processing, the credit authorized by this section may
14 not be paid if the amount of the credit is determined to be less than \$10.

§11-13EE-3. Definitions.

1 (a) For the purposes of this article, the term “adjusted credit amount” shall mean the
2 amount which is equal to one percent of the person’s fixed income reported on his or her federal
3 income tax return for the year, reduced by four percent of that amount for every one percentage
4 point by which such person’s adjusted gross income exceeds one hundred twenty-five percent of

5 the federal poverty guideline applicable to such person as provided in this section.

6 (b) For the purposes of this article, the term “adjusted gross income” shall have the
7 meaning of that term used in the Internal Revenue Code.

8 (c) For the purposes of this article, the term “fixed income” shall mean any income reported
9 by the credit applicant on his or her federal income tax return, which is not “earned income” as
10 that term is used in the Internal Revenue Code.

11 (d) For the purposes of this article, the term "low income" means federal adjusted gross
12 income for the tax year that is one hundred fifty percent or less of the federal poverty guideline,
13 based upon the number of individuals in the family unit of which the low income senior citizen is
14 a member, all as determined annually by the United States Secretary of Health and Human
15 Services.

16 (e) For the purposes of this article, the term "low income senior citizen" means a resident
17 of this state whose federal adjusted gross income for the tax year meets the definition of "low
18 income" as defined in this section, and who has attained the age of sixty-five years: *Provided,*
19 That for all purposes of this article, the term “low income senior citizen” shall also mean and
20 include, as one person, those individuals who file joint federal income tax returns with their
21 spouses, whether one or both such spouses is a low income senior citizen, and whether either or
22 both spouses have attained the age of sixty-five years and have fixed income.

§11-13EE-4. Effective date.

1 This article shall take effect on the first day of January of the first year after the year in
2 which the voters ratify the Fair and Simple Tax Reform Amendment to the constitution of this
3 state.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-34. Prospective termination of tax, preservation for prior periods.

1 Each and every provision of this article is repealed beginning on October 1, 2017:
2 *Provided,* That tax liabilities, if any, arising prior to October 1, 2017, shall be determined,

3 administered, assessed and collected as if the taxes imposed by this article had not been
4 repealed; and the rights and duties of taxpayers and the state shall be fully and completely
5 preserved: *Provided, further,* That provisions for dedication of the proceeds of the tax imposed
6 by this article, if any, arising prior to October 1, 2017, shall be administered, applied and executed
7 as if the taxes imposed by this article had not been repealed; and the interests and duties of all
8 affected parties shall be fully and completely preserved.

ARTICLE 15A. USE TAX.

§11-15A-30. Prospective termination of tax, preservation for prior periods.

1 Each and every provision of this article is repealed beginning on October 1, 2017:
2 *Provided,* That tax liabilities, if any, arising prior to October 1, 2017, shall be determined,
3 administered, assessed and collected as if the taxes imposed by this article had not been
4 repealed; and the rights and duties of taxpayers and the state shall be fully and completely
5 preserved.

ARTICLE 15C. REVISED SALES, SERVICE AND USE TAX.

§11-15C-1. Short title.

1 This article is known and may be cited as the “Revised Sales, Service and Use Tax Law.”

§11-15C-2. Legislative findings and declaration of purpose.

1 (1) The Legislature finds that all vendors, purchasers and other persons, regardless of
2 their means, benefit from the availability of goods and services in the marketplaces of this state
3 and from the use of goods and services in this state.

4 (2) The Legislature further finds that the functions of state government foster and protect
5 those marketplaces and uses, and, as a result, all vendors, purchasers and other persons who
6 avail themselves of those benefits should provide financial support for those functions of state
7 government through a broad-based tax in the form of a sales, service and use tax on the selling,
8 purchasing and using of goods and services in this state.

9 (3) The Legislature further finds that, in the free enterprise system, the best judge of a
10 purchaser's ability to pay for the purchase of goods and services is the purchaser, and, thus, a
11 broad-based sales, service and use tax is firmly based on that principle of sound and fair taxation.

12 (4) The Legislature further finds that such a tax may readily be structured to enhance the
13 economic competitiveness of the state's economy among the economies of other states and
14 nations.

15 (5) The Legislature further finds that the only exceptions to such a broad-based sales,
16 service and use tax should be those which mitigate its potential either for pyramiding tax
17 incidences or for complicating its administration with respect to governmental purchases,
18 purchases for charitable, educational and public safety purposes that relieve the burdens of
19 government and purchases of goods and services by individuals for health care which are
20 predominately paid or reimbursed by third parties including the government.

21 (6) The Legislature further finds that the sales, service and use tax imposed by this article
22 shall also be administered and collected in accordance with the provisions of article 15-b of this
23 chapter.

24 (7) The Legislature does therefore declare that the purpose of this article shall be to
25 impose a broad-based sales, service and use tax for the privilege of selling, purchasing and using
26 goods and services in this state, and it shall be construed so as to give effect to the findings in
27 this section.

§11-15C-3. Definitions of terms.

1 When used in this article, the words defined in this section have the meanings ascribed to
2 them herein, except in those instances where a different meaning is provided in this article or the
3 context in which the word is used clearly indicates a different meaning is intended by the
4 Legislature.

5 (a) Agricultural production. – The term "agricultural production" means the production of
6 food, fiber and woodland products by means of cultivation, tillage of the soil and the conduct of

7 animal, livestock, dairy, apiary, equine or poultry husbandry, horticulture, or any other plant or
8 animal production and all farm practices usually or incidentally related thereto, including the
9 storage, packing, shipping and marketing, but not including any manufacturing, milling or
10 processing of such products by persons other than the original producer thereof.

11 (b) *Business.* – The term “business” includes all activities engaged in or caused to be
12 engaged in, with the object of gain or economic benefit, direct or indirect, and all activities of the
13 state and its political subdivisions which involve sales of tangible personal property or the
14 rendering of services when those sales or services compete with or may compete with the
15 activities of other non-governmental persons.

16 (c) *Communications* – The term "communications" means all telephone, radio, light, light
17 wave, radio telephone, telegraph and other communication or means of communication, whether
18 used for voice communication, computer data transmission or other encoded symbolic information
19 transfers and includes commercial broadcast radio, commercial broadcast television and cable
20 television.

21 (d) *Contracting.* – The term "contracting" means and includes the business or furnishing
22 of work, or both materials and work, for another (by a sole contractor, general contractor, prime
23 contractor, subcontractor or construction manager) in fulfillment of a contract for the construction,
24 alteration, repair, decoration or improvement of a new or existing building or structure, or any part
25 thereof, or for removal or demolition of a building or structure, or any part thereof, or for the other
26 alteration, improvement or development of real property.

27 (e) *Delegate.* – The term “delegate” in the phrase “his or her delegate,” when used in
28 reference to the Tax Commissioner, means any officer or employee of the state tax division of the
29 department of tax and revenue duly authorized by the Tax Commissioner directly, or indirectly by
30 one or more re-delegations of authority, to perform functions mentioned or described in this article
31 or regulations promulgated thereunder.

32 (f) *Directly used or consumed.* –

33 (1) General. – The term “directly used or consumed” in the activities of manufacturing,
34 natural resource production and agricultural production means used or consumed in those
35 activities or operations which constitute an integral and essential part of one of those activities,
36 as contrasted with and distinguished from those activities or operations which are simply
37 incidental, convenient or remote to one of those activities.

38 (2) Uses of tangible or intangible property which constitutes direct use or consumption of
39 the property in the activities of manufacturing, natural resource production or agricultural
40 production includes only uses for the immediate purpose of:

41 (A) Physical incorporation of property into a finished product resulting from manufacturing,
42 natural resource production or agricultural production;

43 (B) Causing a direct physical, chemical or other change upon property undergoing
44 manufacturing, natural resource production or agricultural production;

45 (C) Transporting or storing property undergoing manufacturing, natural resource
46 production or agricultural production;

47 (D) Measuring or verifying a change in property directly used in manufacturing, natural
48 resource production or agricultural production;

49 (E) Physically controlling or directing the physical movement or operation of property
50 directly used in manufacturing, natural resource production or agricultural production;

51 (F) Directly and physically recording the flow of property undergoing manufacturing,
52 natural resource production or agricultural production;

53 (G) Producing energy for property directly used in manufacturing, natural resource
54 production or agricultural production;

55 (H) Facilitating the transmission of gas, water, steam or electricity from the point of their
56 diversion to property directly used in manufacturing, natural resource production or agricultural
57 production;

58 (I) Controlling or otherwise regulating atmospheric conditions required for manufacturing,

59 natural resource production or agricultural production;

60 (J) Serving as an operating supply for property undergoing manufacturing, natural
61 resource production or agricultural production, or for property directly used in manufacturing,
62 natural resource production or agricultural production;

63 (K) Maintenance or repair of property, including maintenance equipment, directly used in
64 manufacturing, natural resource production or agricultural production;

65 (L) Storage, removal or transportation of economic waste resulting from the activities of
66 manufacturing, natural resource production or agricultural production;

67 (M) Pollution control or environmental quality or protection activity directly relating to the
68 activities of manufacturing, natural resource production or agricultural production and personnel,
69 plant, product or community safety or security activity directly relating to the activities of
70 manufacturing, natural resource production or agricultural production; or

71 (N) Otherwise used as an integral and essential part of manufacturing, natural resource
72 production or agricultural production.

73 (3) Uses of tangible or intangible property which do not constitute direct use or
74 consumption in the activities of manufacturing, natural resource production or agricultural
75 production include, but are not limited to:

76 (A) Heating and illumination of office buildings;

77 (B) Janitorial or general cleaning activities;

78 (C) Personal comfort of personnel;

79 (D) Production planning, scheduling of work or inventory control;

80 (E) Marketing, general management, supervision, finance, training, accounting and
81 administration; or

82 (F) An activity or function merely incidental or convenient to manufacturing, natural
83 resource production or agricultural production, rather than uses which are an integral and
84 essential part of those production activities.

85 (g) Electronic data processing services – The term "electronic data processing services"
86 means the processing of another's data, including all processes incident to processing of data
87 such as keypunching, keystroke verification, rearranging or sorting of previously documented data
88 for the purpose of data entry or automatic processing and changing the medium on which data is
89 sorted, whether these processes are done by the same person or several persons; and providing
90 access to computer equipment for the purpose of processing data or examining or acquiring data
91 stored in or accessible to the computer equipment;

92 (h) Generation or production of electric power. – The term "generation of electric power"
93 means the generation and production of electric power engaged in by persons who were subject
94 to the business and occupation tax imposed in article thirteen of this chapter.

95 (i) Gross proceeds. – The term "gross proceeds" means the amount received in money,
96 credits, property or other consideration from sales and services within this state, without deduction
97 on account of the cost of property sold, amounts paid for interest or discounts or other expenses
98 whatsoever. Losses may not be deducted, but any credit or refund made for goods returned may
99 be deducted.

100 (j) Includes and including. - The terms "includes" and "including," when used in a definition
101 contained in this article, does not exclude other things within the meaning of the term being
102 defined.

103 (k) Licensed health care services. – The term "licensed health care services" means those
104 services for which a person is licensed by this state to act as a health care provider as defined in
105 section three, article twenty-six of this chapter, as in effect on June 1, 1991.

106 (l) Manufacturing. – The term "manufacturing" means a systematic operation or integrated
107 series of systematic operations engaged in as a business or segment of a business, including the
108 generation of electric power, which transforms or converts tangible personal property by physical,
109 chemical or other means into a different form, composition or character from that in which it
110 originally existed.

111 (m) Natural resource production. – The term “natural resource production” means, except
112 for oil and gas, the performance, by either the owner of the natural resources or another, of the
113 act or process of exploring, developing, severing, extracting, reducing to possession and loading
114 for shipment, and shipment for sale, profit or commercial use of any natural resource products
115 and any reclamation, waste disposal or environmental activities associated therewith and the
116 construction, installation or fabrication of ventilation structures, mine shafts, slopes, boreholes,
117 dewatering structures, including associated facilities and apparatus, by the producer or others,
118 including contractors and subcontractors, at a coal mine or coal production facility. For the natural
119 resources oil and gas, “natural resource production” means the performance, by either the owner
120 of the natural resources, a contractor or a subcontractor, of the act or process of exploring,
121 developing, drilling, well-stimulation activities such as logging, perforating or fracturing, well-
122 completion activities such as the installation of the casing, tubing and other machinery and
123 equipment and any reclamation, waste disposal or environmental activities associated therewith,
124 including the installation of the gathering system or other pipeline to transport the oil and gas
125 produced or environmental activities associated therewith and any service work performed on the
126 well or well site after production of the well has initially commenced. All work performed to install
127 or maintain facilities up to the point of sale for severance tax purposes would be included in the
128 term “natural resources production” and subject to the direct use concept. “Natural resource
129 production” includes the performance or furnishing of work, or materials or work, in fulfillment of
130 a contract for the construction, alteration, repair, decoration or improvement of a new or existing
131 building or structure, or any part thereof, or for the alteration, improvement or development of real
132 property, by persons other than those otherwise directly engaged in the activities specifically set
133 forth in this subsection as “natural resource production.”

134 (n) Sale, sales or selling. – The terms “sale”, “sales” or “selling” means and includes any
135 transfer of the possession or ownership of tangible personal property for a consideration, including
136 a lease or rental, when the transfer or delivery is made in the ordinary course of the transferor’s

137 business and is made to the transferee or his or her agent for consumption or use or any other
138 purpose. Unless the context provides otherwise, the terms “sale”, “sales” and selling shall also
139 mean the rendering of a service for a charge. Notwithstanding anything to the contrary in this
140 code, “sale” also includes the furnishing of prepaid wireless calling services for consideration.

141 (o) *Service and selected service.* – The terms “service” and “selected service” include all
142 activities engaged in for other persons for a consideration, which involve the rendering of a service
143 as distinguished from the sale of tangible personal property, but shall not include the services
144 rendered by an employee to his or her employer or services rendered by any business if ninety
145 percent of its revenues are received from the regulated activities of extending credit, holding
146 deposits of funds or acting as a financial intermediary or advisor in the transfer of interests in
147 intangible personal property.

148 (p) *Streamlined Sales and Use Tax Agreement.* - The term “Streamlined Sales and Use
149 Tax Agreement” or “agreement,” when used in this article, has the same meaning as when used
150 in article fifteen-b of this chapter, except when the context, in which the word “agreement” is used,
151 clearly indicates that a different meaning is intended by the Legislature.

152 (q) *Tax.* – The term “tax” means the revised sales, service and use tax imposed in this
153 article.

154 (r) *Tax commissioner or commissioner.* – The terms “Tax Commissioner” or
155 “commissioner” are used interchangeably herein and mean the Tax Commissioner of the state of
156 West Virginia, or his or her delegate.

157 (s) *Taxpayer.* – The term “taxpayer” means any person liable for the tax imposed by this
158 article.

159 (t) *Temporarily used in this state.* – The phrase “temporarily used in this state” means a
160 use made while passing through this state in a relatively uninterrupted manner and not intended
161 with reference to any specific location within this state.

162 (u) *Transmission* – The term “transmission” means the act or process of causing liquid,

163 natural gas or electricity to pass or be conveyed from one place or geographical location to
164 another place or geographical location through a pipeline or other medium for commercial
165 purposes.

166 (v) *Transportation* – The term "transportation" means the act or process of conveying, as
167 a commercial enterprise, passengers or goods from one place or geographical location to another
168 place or geographical location.

169 (w) *Use*. – The term "use" means and includes the exercise of any person of any right or
170 power over tangible personal property incident to the ownership, possession or enjoyment of such
171 property, or by any transaction in which possession of or the exercise of any right or power over
172 tangible personal property is acquired for a consideration, including a lease, rental or conditional
173 sale of tangible personal property. As used in this definition, the term "enjoyment" includes a
174 person's right to direct the disposition of the property, whether or not the person has possession
175 of the property. The term "use" does not include the keeping, retaining or exercising of any right
176 or power over tangible personal property for the purpose of subsequently transporting it outside
177 this state for use thereafter solely outside this state. Proof that tangible personal property was
178 sold for delivery in this state shall be prima facie evidence that such property was purchased for
179 use in this state. With respect to services, the term "use" means and includes the direct receipt
180 and active application of the results and benefits of services.

181 (x) *Vendor*. – The term "vendor" means any person engaged in this state in businesses of
182 furnishing services taxed by this article or making sales of, or leasing, tangible personal property
183 or custom software taxed by this article. "Vendor" and "seller" are used interchangeably in this
184 article.

185 (y) Other terms used in this article are defined in article ten and article fifteen-b of this
186 chapter, which definitions are incorporated by reference into this article. Additionally, other
187 sections of this article may define terms primarily used in the section in which the term is defined.

§11-15C-4. Imposition of revised sales, service and use tax; debt owed to this state;

allocation of obligations for charging, paying, collecting and remitting tax; rate of tax.

1 (a) Imposition of tax. – A revised sales, service and use tax is hereby imposed on the
2 vendor for the privilege of selling tangible personal property and of rendering services in this state
3 and on the purchaser for the privilege of using tangible personal property and services in this
4 state. The tax due to be remitted or paid under this article shall, until fully remitted or paid,
5 constitute a debt owed by the taxpayer to this state.

6 (b) Allocation of obligations for charging, paying, collecting and remitting the tax. – It is the
7 intent of this article that the tax imposed herein shall be passed on by the vendor to, and shall be
8 paid by, the purchaser, in accordance with the following allocation of obligations:

9 (1) Vendor obligations. –

10 (A) General. – The vendor shall charge the purchaser for the tax, shall collect the tax from
11 the purchaser, and shall remit the tax to the Tax Commissioner all as provided in this article. The
12 tax shall be added to and constitute a part of the sales price, and shall be collectible as such by
13 the vendor who shall account to the Tax Commissioner for all tax paid by the purchaser.

14 (B) Tax kept separate from gross proceeds of sale. – The vendor shall keep the amount
15 of tax paid separate from the gross proceeds of sale exclusive of the tax unless authorized in
16 writing by the Tax Commissioner to keep such amount of tax in a different manner. Where such
17 authorization is given, the state's claim shall be enforceable against and shall take precedence
18 over all other claims against the moneys commingled.

19 (C) Nonresident vendors. – Every vendor engaging in business anywhere and making
20 sales of tangible personal property for delivery into this state, or with the knowledge, directly or
21 indirectly, that the property or services he, she or it are rendering are intended for use in this state,
22 that are not exempted under the provisions of section nine of this article, shall at the time of
23 making such sales or rendering such services, whether within or without the state, collect the tax
24 imposed by this article from the purchaser, and give to the purchaser a receipt therefor in the

25 manner and form prescribed by the Tax Commissioner, if the Tax Commissioner shall, by
26 regulation, so prescribe.

27 Each such vendor shall list with the Tax Commissioner the name and address of all his,
28 her or its agents operating in this state, and the location of any and all distribution or sales houses
29 or offices or other places of business in this state. Any person required to collect the revised
30 sales, service and use tax under the provisions of this subdivision shall be required to obtain a
31 business registration certificate, as provided in article twelve of this chapter, unless the person
32 does not have sufficient presence in this state so that such registration would violate any provision
33 of the constitution or laws of this state or of the United States.

34 The Tax Commissioner may, in his or her discretion, upon application authorize the
35 collection of the tax herein imposed by any person not engaging in business within this state, who,
36 to the satisfaction of the Tax Commissioner, furnishes adequate security to insure collection and
37 payment of the tax. Such person shall be issued, without charge, a permit to collect such tax in
38 such manner, and subject to such regulations and agreements as the Tax Commissioner shall
39 prescribe. When so authorized, it shall be the duty of such person to collect the applicable tax, if
40 any, upon all tangible personal property and services sold to his, her or its knowledge for use
41 within this state, in the same manner and subject to the same requirements as a vendor engaging
42 in business within this state. Such authority and permit may be cancelled when, at any time, the
43 Tax Commissioner considers the security inadequate, or that such tax can more effectively be
44 collected from the person using such property in this state.

45 (D) *Failure to collect and remit.* – If any vendor required to collect and remit the tax to the
46 Tax Commissioner fails to do so, he, she or it shall be personally liable for such amount as he,
47 she or it failed to collect and remit: *Provided,* That except where the transaction is shown to be
48 exempt from tax under section nine of this article or is subject to the provisions of section eleven
49 of this article, when a purchaser fails to pay the tax to the vendor, the vendor may avoid such
50 liability by reporting to the Tax Commissioner, in writing with the return due to be filed for that

51 same period, the fact of such failure and the purchaser's name, address and such other
52 information as the Tax Commissioner may require.

53 (E) Absorbing tax. – It shall be unlawful for any vendor to advertise or hold out or state to
54 the public or to any purchaser, consumer or user, directly or indirectly, that the tax or any part
55 thereof imposed by this article will be assumed or absorbed by the vendor or that it will not be
56 added to the price of the property sold or service rendered, or if added that it or any part thereof
57 will be refunded. The Tax Commissioner shall have the power to adopt and promulgate rules and
58 regulations for adding such tax, or the equivalent thereof, by providing different methods applying
59 uniformly to vendors within the same general classification for the purpose of enabling such
60 vendors to add and collect, as far as practicable, the amount of such tax.

61 (2) Purchaser obligations. – Any person who uses any tangible personal property or
62 service in this state upon which the tax imposed by this article has not been paid to a vendor or
63 directly to the Tax Commissioner, is, unless the purchase or use of the property or service is
64 exempt pursuant to this article, liable for the amount of such tax. If any purchaser does not pay
65 to the vendor the tax imposed by this section, or, in the case of a sale made exempt from the tax,
66 a purchaser fails to present to the vendor an adequate written certification of the fact of, and basis
67 by which, the sale is not subject to this tax, or if the purchaser signs or presents to the vendor a
68 false certificate, or after signing and presenting a proper certificate uses the items purchased in
69 such manner that the sale would be subject to the tax, the purchaser shall be directly liable for
70 the amount of tax applicable to the transaction or transactions: *Provided*, That nothing herein
71 relieves any purchaser who owes the tax and who has not paid the tax from liability therefor. In
72 such cases the Tax Commissioner may make an assessment against such purchaser, based
73 upon any information within his or her possession or that may come into his or her possession.
74 The assessment and notice thereof shall be made and given in accordance with the provisions of
75 article ten of this chapter.

76 (3) Joint and separate liability. – Unless and until the tax due has been remitted by the

77 vendor or paid by the purchaser to the Tax Commissioner, both the vendor and the purchaser
78 shall remain liable for the tax except as otherwise provided in this article: *Provided*, That the tax
79 imposed on a particular sale or use shall only be collected once by the Tax Commissioner.

80 (c) *Rate of tax.* – Beginning on the effective date of this article, the revised sales, service
81 and use tax imposed herein shall be at the rate of eight cents on each dollar of sales or services:
82 *Provided*, That:

83 (1) Sales of unprepared food and food ingredients intended for human consumption, shall,
84 subject to the exemptions provided in this article, only become taxable at the rate of eight cents
85 on each dollar of sales commencing on and after January 1, 2018;

86 (2) Sales or use of motor vehicles shall be taxable at the rates provided in section five of
87 this article;

88 (3) Sales, use and consumption of gasoline and special fuel shall be taxable as provided
89 in section twenty-one of this article;

90 (4) The service of providing the use of rooms in lodging facilities, such as hotels, motels,
91 tourist homes and rooming houses, shall be taxable at the rate of eleven cents on each dollar of
92 sales; *Provided*, That for purposes of this section, the term “rooming house” shall mean any
93 establishment furnishing rooms to three or more individuals by the day, week or month for a
94 specified charge: *Provided*, That the tax imposed by this article shall not apply to the use of rooms
95 in a lodging facility for thirty consecutive days or more: and *Provided further*, That the price for
96 services made subject to the tax imposed in this paragraph (4) shall not include the amount of
97 any other tax legally imposed on the purchaser of such service if separately stated on the
98 documentation of the same; and

99 (5) The sales of e-cigarette liquid shall be taxable at the rate of eleven cents on each dollar
100 of sales: *Provided*, that, for the purposes of this paragraph (5) the following terms shall have the
101 meaning ascribed to them herein:

102 (A) The term “E-cigarette” means an electrical or electronic device that is composed of a

103 heating element, battery or electrical or electronic circuit, or a combination of heating element,
104 battery and electrical or electronic circuit, which works in combination with e-liquid, and without
105 the use or presence of tobacco, to produce an inhalable product of smoke, vapor, fog, mist, gas
106 or aerosol suspension of nicotine or another substance. The term e-cigarette includes, but is not
107 limited to, any so designed, or similarly designed, product that is manufactured, distributed,
108 marketed or sold as an e-cigarette, e-cigar, e-pipe or under any other name or descriptor; and

109 (B) The term "E-cigarette liquid" means any of the liquids or liquid mixtures which do not
110 contain tobacco and are used in e-cigarettes and is also known as e-juice, e-fluid, e-liquid or e-
111 liquid product. E-cigarette liquid includes e-cigarette liquid mixing kits and e-cigarette mixing kit
112 components. When used in, or with, an e-cigarette, e-cigarette liquid is vaporized or otherwise
113 converted into an inhalable product. E-cigarette liquid may or may not include, without limitation,
114 propylene glycol, vegetable glycerin, nicotine from any source or flavorings.

115 (d) Calculation of tax on fractional parts of a dollar. – The tax computation under
116 subsection (c) of this section shall be carried to the third decimal place, and the tax rounded up
117 to the next whole cent whenever the third decimal place is greater than four and rounded down
118 to the lower whole cent whenever the third decimal place is four or less. The vendor may elect to
119 compute the tax due on a transaction on a per item basis or on an invoice basis provided the
120 method used is consistently used during the reporting period.

121 (e) Separate transactions aggregated for billing; coin-operated vending devices. –
122 Separate sales, such as daily or weekly deliveries, shall not be aggregated for the purpose of
123 computation of the tax even though such sales are aggregated in the billing or payment therefor.
124 Notwithstanding any other provision, coin-operated amusement and vending machine sales shall
125 be aggregated for the purpose of computation of this tax.

126 (f) Credit for sales tax paid to another state. –

127 A person is entitled to a credit against the tax imposed by this article on the use of a
128 particular item of tangible personal property, custom software or service equal to the amount, if

129 any of the sales tax was lawfully paid to another state for the acquisition of that property or service:

130 Provided, That:

131 (1) The amount of credit allowed does not exceed the amount of tax imposed on the use
132 of the property in this state;

133 (2) For purposes of this sub-section: "sales tax" means and includes a sales tax or
134 compensating use tax imposed on the use of tangible personal property or a service by the state
135 in which the sale occurred; and "state" means and includes the District of Columbia but does not
136 include any of the several territories organized by Congress.

**§11-15C-5. Imposition of revised sales, service and use tax on motor vehicle sales; rate of
tax; use of motor vehicle purchased out of state; definition of sale; definition of
motor vehicle; exemptions; collection of tax by Division of Motor Vehicles;
dedication of tax to highways; legislative and emergency rules.**

1 (a) Notwithstanding any provision of this article, all motor vehicle sales to West Virginia
2 residents shall be subject to the tax imposed by this article.

3 (b) Rate of tax on motor vehicles. – Notwithstanding any provision of this article to the
4 contrary, the rate of tax on the sale and use of a motor vehicle shall be six percent on the first
5 \$10,000 of its sale price, as defined in section two, article fifteen-b of this chapter, and eight
6 percent on any part of its sales price, so defined, in excess of \$10,000: Provided, That so much
7 of the sale price or consideration as is represented by the exchange of other vehicles on which
8 the tax imposed by this section or section four, article three, chapter seventeen-a of this code has
9 been paid by the purchaser shall be deducted from the total actual sale price paid for the motor
10 vehicle, whether the motor vehicle be new or used.

11 (c) Motor vehicles purchased out of state. – Notwithstanding anything in this article to the
12 contrary, the tax imposed by this section shall apply to all motor vehicles used, as defined in this
13 article, within this state, regardless of whether the vehicle was purchased in a state other than
14 West Virginia.

15 (d) Definition of sale. – Notwithstanding any provision of this article to the contrary, for
16 purposes of this section, "sale", "sales" or "selling" means any transfer or lease of the possession
17 or ownership of a motor vehicle for consideration, including isolated transactions between
18 individuals not being made in the ordinary course of repeated and successive business and also
19 including casual and occasional sales between individuals not conducted in a repeated manner
20 or in the ordinary course of repetitive and successive transactions.

21 (e) Definition of motor vehicle. – For purposes of this section, "motor vehicle" means every
22 device capable of being propelled in or upon which any person or property is or may be
23 transported or drawn upon a highway including, but not limited to: Automobiles; buses; motor
24 homes; street-legal motorcycles; motorboats; all-terrain vehicles; snowmobiles; low-speed
25 vehicles; trucks, truck tractors and road tractors having a weight of less than fifty-five thousand
26 pounds; trailers, semitrailers, full trailers, pole trailers and converter gear having a gross weight
27 of less than two thousand pounds; and motorboat trailers, fold-down camping trailers, traveling
28 trailers, house trailers and motor homes; except that the term "motor vehicle" does not include:
29 Modular homes, manufactured homes, mobile homes, similar non-motive propelled vehicles
30 susceptible of being moved upon the highways but primarily designed for habitation and
31 occupancy; devices operated regularly for the transportation of persons for compensation under
32 a certificate of convenience and necessity or contract carrier permit issued by the Public Service
33 Commission; mobile equipment as defined in section one, article one, chapter seventeen-a of this
34 code; special mobile equipment as defined in section one, article one, chapter seventeen-a of this
35 code; trucks, truck tractors and road tractors having a gross weight of fifty-five thousand pounds
36 or more; trailers, semitrailers, full trailers, pole trailers and converter gear having weight of two
37 thousand pounds or greater.

38 (f) Exemptions. – Notwithstanding any other provision of this code to the contrary, the tax
39 imposed by this section shall not be subject to any exemption in this code other than the following:

40 (1) The tax imposed by this section does not apply to any passenger vehicle offered for

41 rent in the normal course of business by a daily passenger rental car business as licensed under
42 the provisions of article six-d, chapter seventeen-a of this code. For purposes of this section, a
43 daily passenger car means a motor vehicle having a gross weight of eight thousand pounds or
44 less and is registered in this state or any other state. In lieu of the tax imposed by this section,
45 there is hereby imposed a tax of not less than \$5 nor more than \$7.50 for each day or part of the
46 rental period. The Commissioner of Motor Vehicles shall propose an emergency rule in
47 accordance with the provisions of article three, chapter twenty-nine-a of this code to establish this
48 tax.

49 (2) The tax imposed by this section does not apply where the motor vehicle has been
50 acquired by a corporation, partnership or limited liability company from another corporation,
51 partnership or limited liability company that is a member of the same controlled group and the
52 entity transferring the motor vehicle has previously paid the tax on that motor vehicle imposed by
53 this section. For the purposes of this section, control means ownership, directly or indirectly, of
54 stock or equity interests possessing fifty percent or more of the total combined voting power of all
55 classes of the stock of a corporation or equity interests of a partnership or limited liability company
56 entitled to vote or ownership, directly or indirectly, of stock or equity interests possessing fifty
57 percent or more of the value of the corporation, partnership or limited liability company.

58 (3) The tax imposed by this section does not apply where motor vehicle has been acquired
59 by a senior citizen service organization which is exempt from the payment of income taxes under
60 the United States Internal Revenue Code, Title 26 U.S.C. §501(c)(3) and which is recognized to
61 be a bona fide senior citizen service organization by the Bureau of Senior Services existing under
62 the provisions of article five, chapter sixteen of this code.

63 (4) The tax imposed by this section does not apply to any active duty military personnel
64 stationed outside of West Virginia who acquires a motor vehicle by sale within nine months from
65 the date the person returns to this state.

66 (5) The tax imposed by this section does not apply to motor vehicles acquired by registered

67 dealers of this state for resale only.

68 (6) The tax imposed by this section does not apply to motor vehicles acquired by this state
69 or any political subdivision thereof or by any volunteer fire department or duly chartered rescue
70 or ambulance squad organized and incorporated under the laws of this state as a nonprofit
71 corporation for protection of life or property.

72 (7) The tax imposed by this section does not apply to motor vehicles acquired by an urban
73 mass transit authority, as defined in article twenty-seven, chapter eight of this code, or a nonprofit
74 entity exempt from federal and state income tax under the Internal Revenue Code for the purpose
75 of providing mass transportation to the public at large or designed for the transportation of persons
76 and being operated for the transportation of persons in the public interest.

77 (8) The tax imposed by this section does not apply to the registration of a vehicle owned
78 and titled in the name of a resident of this state if the applicant:

79 (A) Was not a resident of this state at the time the applicant purchased or otherwise
80 acquired ownership of the vehicle;

81 (B) Presents evidence as the Commissioner of Motor Vehicles may require of having titled
82 the vehicle in the applicant's previous state of residence;

83 (C) Has relocated to this state and can present such evidence as the Commissioner of
84 Motor Vehicles may require to show bona fide residency in this state; and

85 (D) Makes application to the Division of Motor Vehicles for a title and registration and pays
86 all other fees required by chapter seventeen-a of this code within thirty days of establishing
87 residency in this state as prescribed in subsection (a), section one-a of this article.

88 (9) The tax imposed by this section does not apply to Class B trucks, truck tractors and
89 road tractors registered at a gross weight of fifty-five thousand pounds or more or to Class C
90 trailers, semitrailers, full trailers, pole trailers and converter gear having a weight of two thousand
91 pounds or greater. If an owner of a vehicle has previously titled the vehicle at a declared gross
92 weight of 55,000 pounds or more and the title was issued without the payment of the tax imposed

93 by this section, then before the owner may obtain registration for the vehicle at a gross weight
94 less than 55,000 pounds, the owner shall surrender to the commissioner the exempted
95 registration, the exempted certificate of title and pay the tax imposed by this section based upon
96 the current market value of the vehicle.

97 (g) The tax imposed by this section applies to, and is imposed upon, the monthly payments
98 for the lease of any motor vehicle leased under a written contract of lease by a resident of West
99 Virginia for a contractually specified continuous period of more than thirty days, which tax is equal
100 to eight percent of the amount of the monthly payment, applied to each payment, and continuing
101 for the entire term of the initial lease period. The tax shall be remitted to the Division of Motor
102 Vehicles on a monthly basis by the lessor of the vehicle. Leases of thirty days or less are taxable
103 under the provisions of this article without reference to this section.

104 (h) *Division of Motor Vehicles to collect.* – Notwithstanding any provision of this article and
105 article ten of this chapter to the contrary, the Division of Motor Vehicles shall collect the tax
106 imposed by this section: *Provided,* That such tax is imposed upon the monthly payments for the
107 lease of any motor vehicle leased by a resident of West Virginia, which tax is equal to eight percent
108 of the amount of the monthly payment, applied to each payment, and continuing for the entire
109 term of the initial lease period. The tax shall be remitted to the Division of Motor Vehicles on a
110 monthly basis by the lessor of the vehicle.

111 (i) *Dedication of tax to highways.* – Notwithstanding any provision of this article to the
112 contrary, all taxes collected pursuant to this section, after deducting the amount of any refunds
113 lawfully paid, shall be deposited in the State Road Fund in the State Treasury and expended by
114 the Commissioner of Highways for design, maintenance and construction of roads in the state
115 highway system.

116 (j) *Legislative rules; emergency rules.* – Notwithstanding any provision of this article and
117 article ten of this chapter to the contrary, the Commissioner of Motor Vehicles shall promulgate
118 legislative rules explaining and implementing this section, which rules shall be promulgated in

119 accordance with the provisions of article three, chapter twenty-nine-a of this code and should
120 include a minimum taxable value and set forth instances when a vehicle is to be taxed at fair
121 market value rather than its purchase price. The authority to promulgate rules includes authority
122 to amend or repeal those rules.

123 (k) Notwithstanding any other provision of this code, no municipal sales or use tax or local
124 sales or use tax or special downtown redevelopment district excise tax or special district excise
125 tax shall be imposed under article twenty-two, chapter seven of this code or article thirteen,
126 chapter eight of this code or article thirteen-b of said chapter or article thirty-eight of said chapter
127 or any other provision of this code, except this section, on sales of motor vehicles as defined in
128 this article or on any tangible personal property excepted or exempted from tax under this section.
129 Nothing in this subsection shall be construed to prevent the application of the municipal business
130 and occupation tax on motor vehicle retailers and leasing companies.

§11-15C-6. Collection of fee in addition to the revised sales, service and use tax for sales
of mobile factory-built homes; deposit of additional fee in West Virginia Affordable
Housing Trust Fund.

1 (a) There is imposed, in addition to the revised sales, service and use tax imposed by the
2 provisions of this article, a fee of \$20 on all sales by licensed dealers of factory-built homes as
3 that term is defined in section two, article fifteen, chapter thirty-seven of this code to be collected
4 as provided in article fifteen-b of this chapter and remitted to the Tax Commissioner to be
5 deposited by the commissioner in the West Virginia Affordable Housing Trust Fund, as provided
6 in article eighteen-d, chapter thirty-one of this code.

7 (b) The moneys collected from this additional fee shall be segregated from other funds in
8 the West Virginia Affordable Housing Trust Fund and shall be accounted for separately. Not more
9 than ten percent of these additional moneys may be expended by the West Virginia Affordable
10 Housing Trust Fund to defray administrative and operating costs and expenses actually incurred
11 by the West Virginia Affordable Housing Trust Fund.

§11-15C-7. Total amount collected is to be remitted.

1 No profit shall accrue to any person as a result of the collection of the tax imposed by this
2 article notwithstanding the total amount of such taxes collected may be in excess of the amount
3 for which such person would be liable by the application of the levy of eight percent to the gross
4 proceeds of his, her or its sales, and the total of all taxes collected by such person shall be
5 returned and remitted to the Tax Commissioner as hereinafter provided.

§11-15C-8. Vendor and purchaser must show sale or use exempt; presumption.

1 In the case of sales and uses exempt from the tax imposed by this article, the burden of
2 proving that a sale or use was exempt from the tax shall be upon both the purchaser and the
3 vendor, unless in the case of the vendor he, she or it takes from the purchaser a certificate signed
4 by and bearing the address of the purchaser and setting forth the reason for the exemption and
5 substantially in the form prescribed by the Tax Commissioner. To prevent evasion, it shall be
6 presumed that all sales and uses are subject to the tax until the contrary is clearly established in
7 a particular case.

§11-15C-9. Exemptions

1 (a) Exemptions for which exemption certificate may be issued — A person having a right
2 or claim to any exemption set forth in this subsection may, in lieu of paying the tax imposed by
3 this article and filing a claim for refund, execute a certificate of exemption, in the form required by
4 the Tax Commissioner, and deliver it to the vendor of the property or service, in the manner
5 required by the Tax Commissioner. However, the Tax Commissioner may, by rule, specify those
6 exemptions authorized in this subsection for which exemption certificates are not required. The
7 following sales or uses of tangible personal property and services are exempt as provided in this
8 subsection:

9 (1) School textbooks. – Sales and use of textbooks required to be used in any of the
10 schools of this state or in any institution in this state which qualifies as a nonprofit or educational
11 institution subject to the West Virginia Department of Education and the Arts, the board of trustees

12 of the university system of West Virginia or the board of directors for colleges located in this state;

13 (2) Government purchases. – Purchases and uses of property and services by this state,
14 its institutions or subdivisions, governmental units, institutions or subdivisions of other states:

15 Provided, That the law of the other state allows the same exemption to governmental units or
16 subdivisions of this state and to the United States, including agencies of federal, state or local
17 governments for distribution in public welfare or relief work;

18 (3) Certain sales to churches. – Sales and use of property or services to churches which
19 make no charge whatsoever for the services they render: Provided, That the exemption granted
20 in this subdivision applies only to services, equipment, supplies, food for meals and materials
21 directly used or consumed by these organizations and does not apply to purchases of gasoline
22 or special fuel;

23 (4) Certain purchases and uses by certain non-profit and charitable organizations. –
24 Purchases and use of tangible personal property or services by a corporation or organization
25 which is exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal
26 Revenue Code of 1986, as amended, and which is:

27 (A) A church or a convention or association of churches as defined in Section 170 of the
28 Internal Revenue Code of 1986, as amended;

29 (B) An elementary or secondary school which maintains a regular faculty and curriculum
30 and has a regularly enrolled body of pupils or students in attendance at the place in this state
31 where its educational activities are regularly carried on;

32 (C) A corporation or organization which annually receives more than one half of its support
33 from any combination of gifts, grants, direct or indirect charitable contributions or membership
34 fees;

35 (D) An organization which has no paid employees and its gross income from fund raisers,
36 less reasonable and necessary expenses incurred to raise the gross income (or the tangible
37 personal property or services purchased with the net income), is donated to an organization which

38 is exempt from income taxes under Section 501(c) (3) of the Internal Revenue Code of 1986, as
39 amended;

40 (E) A youth organization, such as the Girl Scouts of the United States of America, the Boy
41 Scouts of America or the YMCA Indian guide/princess program and the local affiliates thereof,
42 which is organized and operated exclusively for charitable purposes and has as its primary
43 purpose the nonsectarian character development and citizenship training of its members;

44 (F) A bona fide charitable organization which makes no charge whatsoever for the
45 services it renders: *Provided*, That the exemption granted in this paragraph applies only to
46 services, equipment, supplies, food, meals and materials directly used or consumed by the
47 organization;

48 (G) For purposes of this subdivision (4):

49 (i) The term "support" includes, but is not limited to:

50 (I) Gifts, grants, contributions or membership fees;

51 (II) Gross receipts from fund raisers which include receipts from admissions, sales of
52 merchandise, performance of services or furnishing of facilities in any activity which is not an
53 unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of
54 1986, as amended;

55 (III) Net income from unrelated business activities, whether or not the activities are carried
56 on regularly as a trade or business;

57 (IV) Gross investment income as defined in Section 509(e) of the Internal Revenue Code
58 of 1986, as amended;

59 (V) Tax revenues levied for the benefit of a corporation or organization either paid to or
60 expended on behalf of the organization; and

61 (VI) The value of services or facilities (exclusive of services or facilities generally furnished
62 to the public without charge) furnished by a governmental unit referred to in Section 170(c) (1) of
63 the Internal Revenue Code of 1986, as amended, to an organization without charge. This term

64 does not include any gain from the sale or other disposition of property which would be considered
65 as gain from the sale or exchange of a capital asset, or the value of an exemption from any
66 federal, state or local tax or any similar benefit;

67 (ii) The term “charitable contribution” means a contribution or gift to or for the use of a
68 corporation or organization, described in Section 170(c) (2) of the Internal Revenue Code of 1986,
69 as amended; and

70 (iii) The term “membership fee” does not include any amounts paid for tangible personal
71 property or specific services rendered to members by the corporation or organization;

72 (H) The exemption allowed by this subdivision (4) does not apply to purchases or use of
73 gasoline or special fuel, or to purchases or use of motor vehicles titled by the division of motor
74 vehicles under the provisions of article three, chapter seventeen-a of this code or to purchases of
75 tangible personal property or services to be used or consumed in the generation of unrelated
76 business income as defined in Section 513 of the Internal Revenue Code of 1986, as amended:
77 Provided, That the exemption granted in this subdivision applies only to purchases and use of
78 services, equipment, supplies and materials used or consumed in the activities for which the
79 organizations qualify as tax exempt organizations under the Internal Revenue Code.

80 (5) Isolated transactions. – An isolated transaction in which any otherwise taxable service
81 or any tangible personal property is sold, transferred, offered for sale or delivered by the owner
82 of the property or by his or her representative for the owner’s account, the sale, transfer, offer for
83 sale or delivery not being made in the ordinary course of repeated and successive transactions
84 of like character by the owner or on his or her account by the representative: Provided, That
85 nothing contained in this subdivision may be construed to prevent an owner who sells, transfers
86 or offers for sale tangible personal property in an isolated transaction through an auctioneer from
87 availing himself or herself of the exemption provided in this subdivision, regardless of where the
88 isolated sale takes place. The Tax Commissioner may propose a legislative rule for promulgation
89 pursuant to article three, chapter twenty-nine-a of this code which he or she considers necessary

90 for the efficient administration of this exemption;

91 (6) Sales for resale. – Sales of services for resale as such and of tangible personal
92 property to a person for the purpose of reselling the tangible personal property: Provided, That
93 sales of gasoline and special fuel by distributors and importers are taxable except when the sale
94 is to another distributor for resale: Provided, however, That sales of building materials or building
95 supplies or other property to any person engaging in the activity of contracting, as defined in this
96 article, which is to be installed in, affixed to or incorporated by that person or his or her agent into
97 any real property, building or structure are taxable under this subdivision: Provided further, That
98 if such real property, building or structure is owned by a person other than the person engaging
99 in the activity of contracting, the owner of such property is entitled to a credit, against the tax
100 imposed on and collectible from such owner under this article, if any, due to such owner's having
101 been furnished construction labor and materials pursuant to such contracting activity, which credit
102 shall be in the amount of the tax imposed under this article, on the contractor's purchase of such
103 building materials or building supplies which are installed in, affixed to or incorporated into the
104 owner's property: And provided further, That the charges paid by a commercial exhibitor of motion
105 pictures to a distributor of the same, in consideration of the license to exhibit such motion pictures
106 to the public, for which the exhibitor charges an admission fee taxable under this article, shall be
107 treated as a purchase for resale of such motion picture.

108 (7) Prescription drugs, insulin, durable medical equipment, mobility enhancing equipment
109 and prosthetic devices. – Sales to and use by individual consumers of drugs, insulin, durable
110 medical equipment, mobility enhancing equipment and prosthetic devices, dispensed upon
111 prescription and intended for use in the diagnosis, cure, mitigation, treatment or prevention of
112 injury or disease:

113 (8) Licensed health care services. – Charges to patients for licensed health care services
114 and for goods incidental to the rendering of such services.

115 (9) Licensed day care centers. - Charges for licensed day care center services.

116 (10) Casual and occasional sales by certain non-profit organizations. – Casual and
117 occasional sales of property or services not conducted in a repeated manner or in the ordinary
118 course of repetitive and successive transactions of like character by a corporation or organization
119 which is exempt from tax under subdivision (4) of this subsection on its purchases of tangible
120 personal property or services:

121 (A) For purposes of this subdivision, the term “casual and occasional sales not conducted
122 in a repeated manner or in the ordinary course of repetitive and successive transactions of like
123 character” means and includes sales of tangible personal property or services at fund raisers
124 sponsored by a corporation or organization which is exempt, under subdivision (4) of this
125 subsection, from payment of the tax imposed by this article on its purchases, if the fund raisers
126 are of limited duration and are held no more than six times during any twelve-month period and
127 “limited duration” means no more than eighty-four consecutive hours; and

128 (B) The provisions of this subdivision apply to sales made after September 30, 2017.

129 (11) Sales to certain private colleges. – Sales of property or services to a school which
130 has approval from the board of trustees of the university system of West Virginia or the board of
131 directors of the state college system to award degrees, which has its principal campus in this
132 state, and which is exempt from federal and state income taxes under Section 501(c) (3) of the
133 Internal Revenue Code of 1986, as amended: *Provided*, That sales of gasoline and special fuel
134 are taxable;

135 (12) Lottery tickets, materials and services. – Sales of lottery tickets, materials and
136 services by licensed lottery sales agents and lottery retailers authorized by the state lottery
137 commission, under the provisions of article twenty-two, chapter twenty-nine of this code;

138 (13) Food stamps and WIC drafts. – Any sales of tangible personal property or services
139 lawfully paid for with food stamps pursuant to the federal food stamp program codified in 7 U.S.C.
140 § 2011 et seq., as amended, or with drafts issued through the West Virginia Special Supplement
141 Food Program for Women, Infants and Children codified in 42 U.S.C. § 1786;

142 (14) Tickets for admission to certain school activities. – Sales of tickets for admission to
143 activities sponsored by elementary and secondary schools located within this state;

144 (15) Sales between related business entities. – The sale and use of tangible personal
145 property and the rendering and use of services by one corporation, partnership or limited liability
146 company to or for another corporation, partnership or limited liability company when the entities
147 are members of the same controlled group or are related taxpayers as defined in Section 267 of
148 the Internal Revenue Code. “Control” means ownership, directly or indirectly, of stock, partnership
149 interests or membership interests possessing fifty percent or more of the total combined voting
150 power of all classes of the stock of a corporation, partnership interests of a partnership or
151 membership interests of a limited liability company entitled to vote or ownership, directly or
152 indirectly, of stock, equity interests or membership interests possessing fifty percent or more of
153 the value of the corporation, partnership or limited liability company;

154 (16) Certain sales or purchases of food. – Food purchased for the following uses are
155 exempt:

156 (A) Food used, purchased or sold by a public or private school, school-sponsored student
157 organizations or school-sponsored parent-teacher associations to students enrolled in the school
158 or to employees of the school for consumption during normal school hours; but not those sales of
159 food made to the general public;

160 (B) Food used, purchased or sold by a public or private college or university to students
161 enrolled at the college or university when the sales are made on a contract basis so that a fixed
162 price is paid for consumption of food products for a specific period of time without respect to the
163 amount of food product actually consumed by the particular individual contracting for the sale and
164 no money is paid at the time the food product is served or consumed;

165 (C) Food used, purchased or sold by a charitable or private nonprofit organization, a
166 nonprofit organization or a governmental agency under a program to provide food to low-income
167 persons at or below cost;

168 (D) Food sold or used by a charitable or private nonprofit organization, a nonprofit
169 organization or a governmental agency under a program operating in West Virginia for a minimum
170 of five years to provide food at or below cost to individuals who perform a minimum of two hours
171 of community service for each unit of food purchased from the organization;

172 (E) Food sold in an occasional sale by a charitable or nonprofit organization, including
173 volunteer fire departments and rescue squads, if the purpose of the sale is to obtain revenue for
174 the functions and activities of the organization and the revenue obtained is actually expended for
175 that purpose;

176 (F) Food sold or used by any religious organization at a social or other gathering
177 conducted by it or under its auspices, if the purpose in selling the food is to obtain revenue for the
178 functions and activities of the organization and the revenue obtained from selling the food is
179 actually used in carrying on those functions and activities: *Provided*, That purchases made by the
180 organizations are not exempt as a purchase for resale;

181 (17) *Tax prohibited transactions.* – Sales and use of tangible personal property or services
182 which this state is prohibited from taxing under the laws of the United States or under the
183 constitution of this state;

184 (18) *Certain babysitting services.* – Sales of baby-sitting services by individuals who baby-
185 sit for a profit: *Provided*, That the gross receipts of the individual from the performance of baby-
186 sitting services do not exceed five thousand dollars in a taxable year;

187 (19) *Certain government services and materials.* – Sales and use of governmental
188 services or governmental materials sold in the normal course of government operations, including
189 but not limited to sales and use of services and materials provided by public libraries and by
190 libraries at either public or private, not-for-profit schools and institutions of higher learning;

191 (20) *Certain sales by volunteer fire and emergency rescue organizations.* – Sales and
192 use of tangible personal property and services by volunteer fire departments and rescue squads
193 that are exempt from federal income taxes under Section 501(c) (3) or (c) (4) of the Internal

194 Revenue Code of 1986, as amended, if the sole purpose of the sale is to obtain revenue for the
195 functions and activities of the organization and the revenue obtained is exempt from federal
196 income tax and actually expended for that purpose;

197 (21) *Certain sales of food by certain youth organizations.* – Sales of food by little leagues,
198 midget football leagues, youth football or soccer leagues, band boosters or other school or athletic
199 booster organizations supporting activities for grades kindergarten through twelve and similar
200 types of organizations, including scouting groups and church youth groups, if the purpose in
201 selling the food is to obtain revenue for the functions and activities of the organization and the
202 revenues obtained from selling the food are actually used in supporting or carrying on functions
203 and activities of the groups: *Provided*, That the purchases made by the organizations are not
204 exempt as purchases for resale;

205 (22) *Transactions subject to special district excise tax and tax increment financing tax.* –
206 Any sale, service or use upon which a special district excise tax was imposed, pursuant to the
207 provisions of section eleven, article thirteen-b, chapter eight of this code, prior to its repeal, or
208 upon which any tax is imposed pursuant to a tax increment financing provision authorized in this
209 code;

210 (23) *Property and services temporarily used in this state.* – All tangible personal property
211 and services purchased in another state but temporarily used in this state by a non-resident
212 individual, except gasoline or special fuel not contained in the supply tank of a motor vehicle that
213 is not a motor carrier;

214 (24) *Residence or business moved to this state.* – All tangible personal property and
215 services purchased outside this state for use outside this state by a non-resident person who, at
216 least six months thereafter, uses such property or services in this state following the permanent
217 establishment of his, her or its business or residence in this state;

218 (25) *Sales to volunteer fire departments.* – Sales of goods and services to any volunteer
219 fire department organized and incorporated under the laws of the state of West Virginia, including

220 but not limited to purchases for construction or improvement of real estate and for vehicle repair
221 and modification, and of tangible personal property, including but not limited to firefighting or
222 station house equipment, if such services or property are directly used or consumed for the public
223 safety purposes of such organizations: *Provided*, That sales of gasoline and special fuel are
224 taxable;

225 (26) *Tuition.* – Tuition charged for attendance at a private elementary or secondary school
226 which is in compliance with the applicable provisions of chapter eighteen of this code, or at a
227 public or private institution of higher learning which has approval, from the board of trustees of
228 the university system of West Virginia or the board of directors of the state college system, to
229 award post-secondary degrees, which has its principal campus in this state, and which, if it is a
230 private school, is exempt from federal and state income taxes under Section 501(c) (3) of the
231 Internal Revenue Code of 1986, as amended;

232 (27) *Aircraft repair services and parts.* – Sales of aircraft repair, remodeling and
233 maintenance services when the services are to an aircraft operated by a certified or licensed
234 carrier of persons or property, or by a governmental entity, or to an engine or other component
235 part of an aircraft operated by a certificated or licensed carrier of persons or property, or by a
236 governmental entity and sales of tangible personal property that is permanently affixed or
237 permanently attached as a component part of an aircraft owned or operated by a certificated or
238 licensed carrier of persons or property, or by a governmental entity, as part of the repair,
239 remodeling or maintenance service and sales of machinery, tools or equipment directly used or
240 consumed exclusively in the repair, remodeling or maintenance of aircraft, aircraft engines or
241 aircraft component parts for a certificated or licensed carrier of persons or property or for a
242 governmental entity; and

243 (28) *Out of state sales and services.* – Any sale or service rendered by a person, holding
244 a current business registration certificate issued pursuant to article twelve of this chapter, which
245 is treated, according to the provisions of article fifteen-b of this chapter, as being first received by

246 the purchaser thereof outside of this state.

247 (b) Refundable exemptions — Any person having a right or claim to any exemption set
248 forth in this subsection shall first pay to the vendor the tax imposed by this article and then apply
249 to the Tax Commissioner for a refund or credit, or as provided in section eleven of this article,
250 give to the vendor his, her or its West Virginia direct pay permit number. The following sales of
251 tangible personal property and services are exempt from tax as provided in this subsection:

252 (1) Sales for direct use in certain production and service activities. — Sales and use of
253 tangible personal property, such as machinery, supplies, materials and other tangible personal
254 property directly used or consumed in the activities of manufacturing, natural resource production,
255 agricultural production, generation of electric power, communications, transmission or
256 transportation to persons engaged in the activities named in this subdivision as a business:
257 Provided, That this exemption does not apply to purchases of services or of gasoline or special
258 fuel;

259 (2) Selected services by registered businesses. — The rendering of services by a person,
260 holding a current business registration certificate issued pursuant to article twelve of this chapter,
261 and consisting of:

262 (A) the professional services of accounting, architecture, engineering or legal
263 representation, if performed by persons licensed to provide such services in West Virginia;

264 (B) advertising services;

265 (C) electronic data processing services and related custom software; or

266 (D) employment recruiting and placement services; and

267 (3) Certain sales to certain fraternal or social organizations. — Sales of tangible personal
268 property to nationally chartered fraternal or social organizations for the sole purpose of free
269 distribution in public welfare or relief work: Provided, That this exemption does not apply to sales
270 of gasoline or special fuel.

§11-15C-10. Exemptions; exceptions for sales of liquors and wines to private clubs.

1 The exemption provided in this article for sales of tangible personal property for the
2 purpose of resale in the form of tangible personal property shall not apply to persons or
3 organizations licensed under authority of article seven, chapter sixty of this code for the purchase
4 of liquor or wines for resale either from the alcohol beverage control commissioner or from retail
5 liquor licensees licensed under authority of article three-a, chapter sixty of this code.

§11-15C-11. Direct pay permits.

1 (a) Authorized. – Notwithstanding any other provision of this article, the Tax
2 Commissioner may, pursuant to rules promulgated by him or her in accordance with article three,
3 chapter twenty-nine-a of this code, authorize a person that is a purchaser, user, distributor or
4 lessee to which sales or leases of tangible personal property are made or services provided, or
5 by whom taxable uses of such property or services are made, to pay any tax imposed by this
6 article directly to the Tax Commissioner and waive the collection of the tax by that person's
7 vendor. No such authority shall be granted or exercised except upon application to the Tax
8 Commissioner and after issuance by the Tax Commissioner of a direct pay permit. Each direct
9 pay permit granted pursuant to this section is valid until surrendered by the holder or canceled for
10 cause by the commissioner. The commissioner shall prescribe by rules promulgated in
11 accordance with article three, chapter twenty-nine-a of this code, those activities which will cause
12 cancellation of a direct pay permit issued pursuant to this section. Upon issuance of a direct pay
13 permit, payment of the tax imposed or assertion of the exemptions allowed by this article, on
14 sales, leases or uses of tangible personal property and on sales or uses of taxable services, from
15 the vendors of the personal property or services shall be made directly to the Tax Commissioner
16 by the permit holder.

17 (b) Returns. – On or before the fifteenth day of each month, every permit holder shall
18 make and file with the Tax Commissioner a revised sales, service and use tax direct pay permit
19 return for the preceding month in the form prescribed by the Tax Commissioner showing the total
20 value of the tangible personal property purchased or used, the amount of taxable services

21 purchased or used, the amount tax due from the permit holder, which shall be paid to the Tax
22 Commissioner with the return, and any other information as the Tax Commissioner considers
23 necessary: *Provided*, That if the amount of tax due averages less than \$250 per month, the Tax
24 Commissioner may permit the filing of quarterly returns in lieu of monthly returns and the amount
25 of tax shown on the returns to be due shall be remitted on or before the fifteenth day following the
26 close of the calendar quarter; and if the amount of tax due averages less than one hundred fifty
27 dollars per calendar quarter, the Tax Commissioner may permit the filing of an annual direct pay
28 permit return and the amount of tax shown on the return to be due shall be remitted on or before
29 the last day of January each year: *Provided, however*, That the Tax Commissioner may, by
30 nonemergency legislative rules promulgated pursuant to article three, chapter twenty-nine-a of
31 this code, change the minimum amounts established in this subsection. The Tax Commissioner,
32 upon written request by the permit holder, may grant a reasonable extension of time, upon such
33 terms as the Tax Commissioner may require, for the making and filing of direct pay permit returns
34 and paying the tax due. Interest on the tax shall be chargeable on every extended payment at the
35 rate specified in section seventeen, article ten of this chapter.

36 (c) *Term of permit.* – A permit issued pursuant to this section is valid until expiration of the
37 taxpayer's registration year under article twelve of this chapter. This permit is automatically
38 renewed when the taxpayer's business registration certificate is issued for the next succeeding
39 fiscal year, unless the permit is surrendered by the holder or canceled for cause by the Tax
40 Commissioner.

41 (d) *Effect of holding permit.* – Persons who hold a direct payment permit which has not
42 been canceled are not required to pay the tax to the vendor as otherwise provided in this article.
43 In lieu of paying the tax, such persons shall notify each vendor from whom tangible personal
44 property is purchased, leased or used, or from whom services are purchased or used, of their
45 direct payment permit number and that the tax is being paid directly to the Tax Commissioner.
46 Upon receipt of the notice, the vendor is absolved from all duties and liabilities imposed by this

47 chapter for the collection and remittance of the tax with respect to taxable sales or uses of tangible
48 personal property and taxable sales or uses of services to the permit holder. Vendors who make
49 sales upon which the tax is not collected by reason of the provisions of this section shall maintain
50 records in such manner that the amount involved and identity of each purchaser may be
51 ascertained.

52 (e) Termination of permit. – Upon the expiration, cancellation or surrender of a direct
53 payment permit, the provisions of this chapter, without regard to this section, will thereafter apply
54 to the person who previously held the permit, and that person shall promptly notify, in writing,
55 vendors from whom tangible personal property or services are purchased or leased of the
56 cancellation or surrender. Upon receipt of the notice, the vendor is subject to the provisions of
57 this chapter, without regard to this section, with respect to all sales, distributions, leases or storage
58 of tangible personal property, thereafter made to or for that person.

§11-15C-12. Discretionary designation of per se exemptions.

1 Notwithstanding any other provision of this code, the Tax Commissioner may, by rule,
2 specify those exemptions authorized in this article or in other provisions of this code or applicable
3 federal law for which exemption certificates or direct pay permits are not required.

§11-15C-13. Apportionment of gross proceeds.

1 (a) Exempt and taxable uses. – Whenever a taxpayer uses or will use purchased or
2 leased tangible personal property, a service or the results of a service for both exempt and
3 nonexempt purposes, to determine the portion of the gross proceeds paid to the vendor for such
4 property or service upon which the tax imposed by this article shall apply, the gross proceeds
5 shall be apportioned between the exempt and taxable uses in a manner established as
6 reasonable by the Tax Commissioner by regulations the Tax Commissioner may prescribe.

7 (b) Uses inside and outside this state. – Whenever a person uses purchased or leased
8 tangible personal property, a service or the results of a service both inside and outside this state,
9 to determine the portion of the gross proceeds paid to the vendor for such property or service

10 upon which the tax imposed by this article shall apply, the gross proceeds shall be apportioned
11 between the in-state and out-of-state uses in a manner established as reasonable by the Tax
12 Commissioner by regulations the Tax Commissioner may prescribe.

§11-15C-14. Agreements by competing taxpayers.

1 To provide uniform methods of adding the average equivalent of the tax to the selling price
2 in each sale or transaction subject to the tax, appropriate rules and regulations, except as
3 otherwise herein provided, may be agreed upon or adopted by competing taxpayers or
4 associations of taxpayers, except that all collections shall be made on the basis of the total
5 transaction at the time of sale, without regard to the value of the separate items making up the
6 total amount of the sale. Such rules and regulations, if they do not involve price fixing, shall not
7 be deemed illegal as in restraint of trade or commerce. The Tax Commissioner shall cooperate in
8 formulating such rules and regulations, and, in the event appropriate rules and regulations are
9 not submitted to him or her within thirty days after this article takes effect, or within a reasonable
10 extended period fixed by the Tax Commissioner, he or she shall formulate and promulgate
11 appropriate rules and regulations to effectuate the purpose of this section.

§11-15C-15. Collection of tax when sale on credit.

1 A vendor doing business wholly or partially on a credit basis shall require the purchaser
2 to pay the full amount of tax due upon a credit sale at the time such sale is made or within thirty
3 days thereafter.

§11-15C-16. Separate records of sales required to be maintained by vendors.

1 (a) Each vendor shall keep records necessary to account for:
2 (1) The vendor's gross proceeds from sales of personal property and services;
3 (2) The vendor's gross proceeds from taxable sales;
4 (3) The vendor's gross proceeds from exempt sales;
5 (4) The amount of taxes collected under this article, which taxes shall be held in trust for
6 the state of West Virginia until paid over to the Tax Commissioner; and

7 (5) Any other information as required by this article, or article fifteen-b of this chapter, or
8 as required by the Tax Commissioner.

9 (b) If any vendor engaged in a business making sales or rendering services subject to the
10 tax imposed under this article, who is at the same time engaged in some other kind of business
11 making sales or rendering services, not taxable under this article, fails to keep such the separate
12 records required by this section, there shall be levied upon such vendor a tax based upon the
13 entire gross proceeds of both or all of his, her or its businesses.

§11-15C-17. Sales to affiliated companies or persons.

1 In determining gross proceeds of sales from one to another of two or more related or
2 affiliated persons, or under other circumstances where as a result of the relationship or affiliation
3 between the vendor and purchaser the gross proceeds from a sale are not indicative of the true
4 value of the subject matter of the sale, the Tax Commissioner shall prescribe uniform and
5 equitable rules for determining the amount upon which the tax shall be imposed, corresponding
6 as nearly as possible to gross proceeds from the sale of similar products or services of like quality
7 or character, where no common interest exists between the parties.

§11-15C-18. Tax return and payment; exceptions.

1 (a) Payment of tax. – The tax levied by this article is due and payable in monthly
2 installments, on or before the twentieth day of the month next succeeding the month in which the
3 tax accrued, except as otherwise provided in this article.

4 (b) Tax return. – The taxpayer shall, on or before the twentieth day of each month, make
5 out and mail to the Tax Commissioner a return for the preceding month, in the form prescribed by
6 the Tax Commissioner, showing:

7 (1) The total gross proceeds of the vendor's business for the preceding month;

8 (2) The gross proceeds of the vendor's business upon which the tax is based;

9 (3) The amount of the tax for which the vendor is liable; and

10 (4) Any further information necessary in the computation and collection of the tax which

11 the Tax Commissioner may require, except as otherwise provided in this article or article fifteen-
12 b of this chapter.

13 (c) Remittance to accompany return. – Except as otherwise provided in this article or
14 article fifteen-b of this chapter, a remittance for the amount of the tax shall accompany the return.

15 (d) Deposit of collected tax. – Tax collected by the Tax Commissioner shall be deposited
16 as provided in section twenty-four of this article, except that:

17 (1) Tax collected on sales of gasoline and special fuel shall be deposited in the State Road
18 Fund; and

19 (2) Any tax collected by the Alcohol Beverage Control Commissioner from persons or
20 organizations licensed under authority of article seven, chapter sixty of this code shall be paid into
21 a revolving fund account in the State Treasury, designated the Drunk Driving Prevention Fund, to
22 be administered by the Commission on Drunk Driving Prevention, subject to appropriations by
23 the Legislature.

24 (e) Return to be signed. – A return shall be signed by the taxpayer or the taxpayer's duly
25 authorized agent, when a paper return is prepared and filed. When the return is filed electronically,
26 the return shall include the digital mark or digital signature, as defined in article three, chapter
27 thirty-nine-a of this code, or the personal identification number of the taxpayer, or the taxpayer's
28 duly authorized agent, made in accordance with any procedural rule that may be promulgated by
29 the Tax Commissioner.

30 (f) Accelerated payment exception. –

31 (1) Notwithstanding any other provision of this code to the contrary, taxpayers whose
32 average monthly payment of the taxes levied by this article during the previous calendar year
33 exceeds \$100,000, shall remit the tax attributable to the first fifteen days of June each year by
34 June 20.

35 (2) For purposes of complying with subdivision (1) of this subsection, the taxpayer shall
36 remit an amount equal to the amount of tax imposed by this article on actual taxable sales of

37 tangible personal property and custom software and sales of taxable services during the first
38 fifteen days of June or, at the taxpayer's election, the taxpayer may remit an amount equal to fifty
39 percent of the taxpayer's liability for tax under this article on taxable sales of tangible personal
40 property and custom software and sales of taxable services made during the preceding month of
41 May.

42 (3) For a business which has not been in existence for a full calendar year, the total tax
43 due from the business during the prior calendar year shall be divided by the number of months,
44 including fractions of a month, that it was in business during the prior calendar year; and if that
45 amount exceeds \$100,000, the tax attributable to the first fifteen days of June each year shall be
46 remitted by June 20 as provided in subdivision (2) of this subsection.

47 (4) When a taxpayer required to make an advanced payment of tax under subdivision (1)
48 of this subsection makes out its return for the month of June, which is due by July 20, the taxpayer
49 may claim as a credit against liability under this article for tax on taxable transactions during the
50 month of June the amount of the advanced payment of tax made under subdivision (1) of this
51 subsection.

52 (g) Quarterly and annual returns exception.

53 (1) When the total revised sales, service and use tax remittance for which a person is
54 liable does not exceed an average monthly amount over the taxable year of \$250.00, he or she
55 may pay the tax and make a quarterly return on or before the twentieth day of the first month in
56 the next succeeding quarter in lieu of monthly returns.

57 (2) When the total revised sales, service and use tax remittance for which a person is
58 liable does not in the aggregate exceed \$600.00 for the taxable year, he or she may pay the tax
59 and make an annual return on or before 30 days after the end of his or her taxable year for federal
60 income tax purposes.

61 (3) The Tax Commissioner may, by nonemergency legislative rules promulgated pursuant
62 to article three, chapter twenty-nine-a of this code, change either or both the minimum amounts

63 established in this subsection.

§11-15C-19. Liability of officers of corporation and other responsible persons.

1 If a vendor is an association or corporation, the officers thereof having actual control of
2 the funds thereof, or any other responsible person, as the term “person” is defined in section two
3 or article ten of this chapter, shall be personally liable, jointly and severally, for any default on the
4 part of the association or corporation in complying with the provisions of this article, and payment
5 of the tax and any additions to tax, penalties and interest thereon imposed with respect thereto
6 by article ten of this chapter may be enforced against them as against the association or
7 corporation which they represent.

§11-15C-20. Receivership; bankruptcy; priority of tax.

1 In the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of
2 the property or estate of any person, all taxes due and unpaid under this article shall be paid from
3 the first money available for distribution in priority to all claims and liens except taxes and debts
4 due the United States which under federal law are given priority over the debts and liens created
5 by this article. Any person charged with the administration or distribution of any such property or
6 estate who shall violate the provisions of this section shall be personally liable for any taxes
7 accrued and unpaid under this article which are chargeable against the person whose property
8 or estate is in administration or distribution.

§11-15C-21. Tax on motor fuel.

1 (a) General. - All motor fuel and alternative fuel sold, delivered or imported within this state
2 which is subject to the flat rate of the tax imposed by section five, article fourteen-c of this chapter,
3 is subject to the tax imposed by this article and comprises the variable component of the tax
4 imposed by section five, article fourteen-c of this chapter and is collected and remitted at the time
5 the tax imposed by said section is remitted. Sales of motor fuel and alternative fuel upon which
6 the tax imposed by this article has been paid is not again taxed under the provisions of this
7 section. This section means that all gallons of motor fuel and equivalent gallons of alternative fuel

8 sold and delivered or delivered in this state are taxed one time.

9 (b) Measure of tax. - The measure of tax imposed by this section is as follows:

10 (1) On sales of motor fuel, the average wholesale price as defined and determined in
11 section five, article fourteen-c of this chapter. For purposes of maintaining revenue for highways,
12 and recognizing that the tax imposed by this article is generally imposed on gross proceeds from
13 sales to ultimate consumers, whereas the tax on motor fuel herein is imposed on the average
14 wholesale price of the motor fuel; in no case, for the purposes of taxation under this section, may
15 the average wholesale price be determined to be less than \$.97 per gallon of motor fuel for all
16 gallons of motor fuel sold during the reporting period, notwithstanding any provision of this article
17 to the contrary. For the purpose of taxation under this section, in no case may the average
18 wholesale price be determined to be less than \$2.34 per gallon of motor fuel for all gallons of
19 motor fuel sold during the reporting period notwithstanding any provision of this article to the
20 contrary. Any limitation on the average wholesale price of motor fuel contained in this subsection
21 shall not be applicable to alternative fuel.

22 (2) On sales of alternative fuel, the average wholesale price as defined and determined in
23 section five, article fourteen-c of this chapter.

24 (3) The rate of tax imposed under this section on the importation into this state of motor
25 fuel purchased outside this state when the purchase is subject to the flat rate of the tax imposed
26 by section five, article fourteen-c of this chapter shall not be less than five percent of the average
27 wholesale price of the motor fuel, as determined in accordance with said section five, article
28 fourteen-c. The motor fuel subject to the tax imposed by this section comprises the variable
29 component of the tax imposed by section five, article fourteen-c, and shall be collected and
30 remitted by the seller at the time the seller remits the tax imposed by the said section five, article
31 fourteen-c.

32 (4) The rate of tax imposed under this section, on the use or consumption in this state of
33 motor fuel purchased outside this state, shall be at the rate of five percent of the average

34 wholesale price of the motor fuel, as determined in accordance with section five, article fourteen-
35 c of this chapter. Motor fuel contained in the fuel supply tank of a motor vehicle that is not a motor
36 carrier is not taxable except that motor fuel imported in the fuel supply tank or auxiliary tank of
37 construction equipment, mining equipment, track maintenance equipment or other similar
38 equipment, is taxed in the same manner as that in the fuel supply tank of a motor carrier.

39 (c) Definitions. - For purposes of this section, the terms "gasoline" and "special fuel" and
40 "alternative fuel" are defined as provided in section two, article fourteen-c of this chapter. Other
41 terms used in this section have the same meaning as when used in a similar context in said article.

42 (d) Computation of tax due from motor carriers. - Every person who operates or causes to
43 be operated a motor carrier in this state shall pay the tax imposed by this section on the average
44 wholesale price of all gallons or equivalent gallons of motor fuel used in the operation of a motor
45 carrier within this state, under the following rules:

46 (1) The total amount of motor fuel used in the operation of the motor carrier within this
47 state is that proportion of the total amount of motor fuel used in a motor carrier's operations within
48 and without this state, that the total number of miles traveled within this state bears to the total
49 number of miles traveled within and without this state.

50 (2) A motor carrier shall first determine the gross amount of tax due under this section on
51 the average wholesale value, determined under section five, article fourteen-c of this chapter, of
52 motor fuel used in the operation of the motor carrier within this state during the preceding quarter,
53 as if all gasoline and special fuel had been purchased outside this state.

54 (3) Next, the taxpayer shall determine the total tax paid under this article on all motor fuel
55 purchased in this state for use in the operation of the motor carrier.

56 (4) The difference between (2) and (3) is the amount of tax due under this subsection
57 when (2) is greater than (3), or the amount to be refunded or credited to the motor carrier when
58 (3) is greater than (2), which refund or credit is allowed in the same manner and under the same
59 conditions as a refund or credit is allowed for the tax imposed by article fourteen-a of this chapter.

60 (e) Tax return and tax due. -

61 (1) The tax imposed by this section on sales of motor fuel shall be paid by each taxpayer
62 on or before the last day of the calendar month by check, bank draft, certified check or money
63 order payable to the Tax Commissioner for the amount of tax due for the preceding month
64 notwithstanding any provision of this article to the contrary. The commissioner may require all or
65 certain taxpayers to file tax returns and payments electronically. The return required by the
66 commissioner shall accompany the payment of tax. If no tax is due, the return required by the
67 commissioner shall be completed and filed on or before the last day of the month.

68 (2) The tax due under this section comprising the variable component of the tax due under
69 article fourteen-c of this chapter on alternative fuel, is due and shall be collected and remitted at
70 the time the tax imposed by section five, article fourteen-c of this chapter is due, collected and
71 remitted.

72 (3) The tax due under this section from motor carriers on the uses or consumption in this
73 state of motor fuel shall be paid by each taxpayer on or before January 25, April 25, July 25 and
74 October 25 of each year, notwithstanding any provision of this article to the contrary, by check,
75 bank draft, certified check or money order, payable to the Tax Commissioner, for the amount of
76 tax due for the preceding quarter. The tax due under this article comprising the variable
77 component of the tax due under article fourteen-c of this chapter is due on the last day of the
78 month. Every taxpayer shall make and file with his or her remittance, a return showing the
79 information the Tax Commissioner requires. The tax due under this article comprising the variable
80 component of the tax due under article fourteen-c of this chapter on alternative fuel, is due and
81 shall be collected and remitted at the time the tax imposed by section five, article fourteen-c of
82 this chapter is due, collected and remitted.

83 (f) Compliance. - To facilitate ease of administration and compliance by taxpayers, the
84 Tax Commissioner shall require persons liable for the tax imposed by this section on sales of
85 motor fuel to file a combined return and make a combined payment of the tax due under this

86 article on sales of motor fuel and the tax due under article fourteen-c of this chapter on motor fuel.
87 In order to encourage use of a combined return each month and the making of a single payment
88 each month for both taxes, the due date of the return and tax due under article fourteen-c of this
89 chapter is the last day of each month notwithstanding any provision in said article to the contrary.
90 The Tax Commissioner may prescribe reporting and payment requirements for tax due under this
91 section on alternative fuel which accommodate the due dates and requirements prescribed in this
92 section and article fourteen-c of this chapter, either under a separate return and payment or a
93 combined return and payment, within the discretion of the Tax Commissioner: *Provided*, That the
94 Tax Commissioner shall require motor carriers liable for the taxes imposed by this section on the
95 use of motor fuel in the operation of motor carriers within this state, and the tax imposed by article
96 fourteen-a of this chapter on such gallons of motor fuel, to file a combined return and make a
97 combined payment of the tax due under this section and article fourteen-a of this chapter on the
98 fuel. In order to encourage use of a combined return and the making of a single payment each
99 quarter for both taxes, the due date of the return and tax due under article fourteen-a of this
100 chapter is the last day of January, April, July and October of each calendar year: *Provided*, That
101 the Tax Commissioner may prescribe reporting and payment requirements for tax due under this
102 section on alternative fuel which accommodate the due dates and requirements prescribed in this
103 section and article fourteen-c of this chapter, either under a separate return and payment or a
104 combined return and payment, within the discretion of the Tax Commissioner.

105 (g) *Dedication of tax.* - All tax collected under the provisions of this section, after deducting
106 the amount of refunds lawfully paid, shall be deposited in the State Road Fund in the State
107 Treasurer's office and used only for the purpose of construction, reconstruction, maintenance and
108 repair of highways and payment of principal and interest on state bonds issued for highway
109 purposes. Notwithstanding any provision to the contrary, tax collected on the sale of aviation fuel
110 after deducting the amount of refunds lawfully paid shall be deposited in the State Treasurer's
111 office and transferred to the State Aeronautical Commission to be used for the purpose of

112 matching federal funds available for the reconstruction, maintenance and repair of public airports
113 and airport runways.

114 (h) Construction. - This section does not tax a sale of motor fuel which this state is
115 prohibited from taxing under the constitution of this state or the constitution or laws of the United
116 States.

§11-15C-22. Keeping and preserving of taxpayer records; nonresidents.

1 (a) General. – Each taxpayer shall keep complete and accurate records of taxable sales,
2 purchases and of charges, together with a record of the tax collected or paid thereon, and shall
3 keep all invoices, bills of lading and such other pertinent documents in such form as the Tax
4 Commissioner may by regulation require. Such records and other documents shall be preserved
5 for a period of time not less than three years, unless the Tax Commissioner shall consent in writing
6 to their destruction within that period or by order require that they be kept longer.

7 (b) Nonresidents. – A nonresident person engaged in a business within this state in
8 conduct as a result of which the tax imposed by this article becomes due, shall keep within this
9 state adequate records concerning the operation of the business, and all taxes collected and paid
10 in the course of the business. The amount of the tax collected shall not be transmitted outside of
11 this state without the written consent of, and in accordance with the conditions prescribed by the
12 Tax Commissioner.

§11-15C-23. Records of Tax Commissioner; preservation of returns.

1 The Tax Commissioner shall keep full and accurate records of all moneys received by him
2 or her. He or she shall preserve all returns filed with him or her hereunder for five years.

§11-15C-24. Proceeds of tax; appropriation of certain revenues.

1 (a) The proceeds of the tax imposed by this article shall be deposited in the General
2 Revenue Fund of the state except as otherwise expressly provided in this article.

3 (b) School Construction Fund. – After the payment or commitment of the proceeds or
4 collections of this tax for the purposes set forth in section eighteen of this article, there shall be

5 dedicated from the collections of this tax the amount of \$27,216,996 annually. This amount shall
6 be prorated monthly and deposited into the School Construction Fund created pursuant to section
7 six, article nine-d, chapter eighteen of this code.

8 (c) *Prepaid wireless calling service.* – The proceeds or collections of this tax from the sale
9 of prepaid wireless service are dedicated as follows:

10 (1) The tax imposed by this article upon the sale of prepaid wireless calling service is in
11 lieu of the wireless enhanced 911 fee imposed by section six-b, article six, chapter twenty-four of
12 this code.

13 (2) Within thirty days following the end of each calendar month, the Tax Commissioner
14 shall remit to the Public Service Commission the proceeds of the tax imposed by this article upon
15 the sale of prepaid wireless calling service in the preceding month, determined as follows: For
16 purposes of determining the amount of those monthly proceeds, the Tax Commissioner shall use
17 an amount equal to one twelfth of the wireless enhanced 911 fees collected from prepaid wireless
18 calling service under section six-b, article six, chapter twenty-four of this code during the previous
19 twelve months. The Public Service Commission shall receive, deposit and disburse the proceeds
20 in the manner prescribed in said section.

21 (d) After the payment or commitment of the proceeds or collections of this tax as provided
22 in section eighteen of this article, and after satisfaction of the provisions of subsections (b) and
23 (c) of this section, commencing on July 1 of the first year following the year in which the voters
24 ratify the Fair and Simple Tax Reform Amendment to the constitution of this state, and continuing
25 in each year thereafter, if the combined balance of funds, as of the thirtieth day of June of that
26 same year, in the Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve
27 Fund - Part B established in section twenty, article two, chapter eleven-b of this code, exceeds
28 ten percent of the general revenue fund budgeted for the fiscal year ending on that same said
29 date, then one half of the amount, if any, by which the annual receipts from the tax imposed by
30 this article in that year exceeds the amount of receipts budgeted to be collected therefrom in the

31 fiscal year commencing on July 1, 2017, shall be deposited into the Revenue Fund Shortfall
32 Reserve Fund, to be retained and applied as provided herein and in article two, of chapter eleven-
33 b of this code, and the balance of such excess shall remain in the General Fund: *Provided, That*
34 notwithstanding any provision of this code to the contrary, the funds to be deposited in the
35 Revenue Fund Shortfall Reserve Fund pursuant to this section shall, in any given fiscal year, only
36 be appropriated for expenditure in an amount which exceeds the difference between the amount
37 of revenue estimated to be collected for that year from the corporation net income tax imposed
38 by article twenty-four, of chapter eleven of this code and the amount which would have been
39 estimated to be collected for that year from the imposition of the said corporation net income tax
40 but for the reduction in that year in the rate of such tax provided for in section four of that article,
41 if any.

42 (e) After the payment or commitment of the proceeds or collections of this tax as provided
43 in section eighteen of this article, and after satisfaction of the provisions of subsections (b), (c)
44 and (d) of this section, if applicable, on July 1, 2018, the remaining amount of the taxes collected
45 under this article in excess of the sum of \$150,000,000, as of the end of the fiscal year ending
46 June 30, 2018, shall be deposited into the Revenue Fund Shortfall Reserve Fund, to be retained
47 and applied as provided herein and in article two, of chapter eleven-b of this code: *Provided, That*
48 commencing on July 1, 2019, and on the first day of July of, each year thereafter, one half of the
49 amount, by which the collections of the tax imposed by this article in the immediate past fiscal
50 year, exceeds the amount of collections of the tax for the fiscal year next preceding that year,
51 shall also be deposited into the Revenue Fund Shortfall Reserve Fund, to be retained and applied
52 as provided herein and in article two, of chapter eleven-b of this code:

§11-15C-25. Construction and severability.

1 (a) *Construction.* – If a court of competent jurisdiction finds that the provisions of this article
2 and of article fifteen-b of this chapter conflict and cannot be harmonized, then the provisions of
3 this article shall control.

4 (b) Severability. – If any section, subsection, subdivision, paragraph, sentence, clause or
5 phrase of this article is for any reason held to be invalid, unlawful or unconstitutional, that decision
6 may not affect the validity of the remaining portions of this article or any part thereof.

§11-15C-26. General procedure and administration; Streamlined Sales and Use Tax

Agreement; Legislative Rules.

1 Each provision of articles ten and fifteen-b of this chapter shall apply to the tax imposed
2 by this article with like effect as if said articles were applicable only to the tax imposed by this
3 article and were set forth in extenso in this article: *Provided*, That each and every reference to the
4 terms “sales tax,” “use tax” and “sales and use tax” in the said articles ten and fifteen-b shall also
5 mean and include the revised sales, service and use tax imposed under this article: *Provided*,
6 *however*, That notwithstanding anything in this code to the contrary, in the case of any conflict
7 between the provisions of this article, and the terms of articles ten or fifteen-b of this chapter, the
8 provisions of this article shall control. Within ninety days following the passage of the bill enacting
9 this article, the Tax Commissioner shall propose for ultimate promulgation, in accordance with the
10 procedures provided in article three of chapter twenty-nine-a of this code, any such legislative
11 rules as he or she may deem necessary to administer the provisions of this article, and in doing
12 so, the Tax Commissioner may adopt, with appropriate context modifications, any legislative rule
13 then already in effect which is in full conformity with the provisions of this article.

§11-15C-27. Effective date.

1 This article shall take effect on October 1, 2017.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-13. Barrel tax on nonintoxicating beer.

1 (a) There is hereby levied and imposed, in addition to the license taxes provided for in this
2 article, a tax of \$5.50 on each barrel of thirty-one gallons and in like ratio on each part barrel of
3 nonintoxicating beer manufactured in this state for sale within this state, whether contained or
4 sold in barrels, bottles or other containers, and a like tax is hereby levied and imposed upon all

5 nonintoxicating beer manufactured outside of this state and brought into this state for sale within
6 this state: Provided, That on and after January 1, 2018, the tax imposed by this section shall be
7 \$11 on each barrel of thirty-one gallons and in like ratio on each part barrel of nonintoxicating
8 beer manufactured in this state for sale within this state, whether contained or sold in barrels,
9 bottles or other containers, and a like tax is hereby levied and imposed upon all nonintoxicating
10 beer manufactured outside of this state and brought into this state for sale within this state; but
11 no nonintoxicating beer manufactured, sold or distributed in this state is subject to more than one
12 barrel tax. The brewer manufacturing or producing nonintoxicating beer within this state for sale
13 within this state shall pay the barrel tax on such nonintoxicating beer, and, except as provided
14 otherwise, the distributor who is the original consignee of nonintoxicating beer manufactured or
15 produced outside of this state, or who brings such nonintoxicating beer into this state, shall pay
16 the barrel tax on such nonintoxicating beer manufactured or produced outside of this state:
17 Provided, That the barrel tax imposed by this section shall not apply to nonintoxicating beer
18 manufactured by a brewpub.

19 (b) On or before the tenth day of each month during the license period, every brewer or
20 operator of a brewpub who manufactures or produces nonintoxicating beer within this state shall
21 file a report in writing, under oath, to the Tax Commissioner, in the form prescribed by the Tax
22 Commissioner, stating its total sales, or in the case of a brewpub, its total estimated production
23 of nonintoxicating beer within this state during that month, and at the same time shall pay the tax
24 levied by this article on such production. On or before the tenth day of each month during the
25 license period, every distributor who is the original consignee of nonintoxicating beer
26 manufactured or produced outside this state or who brings such beer into this state for sale shall
27 file a report in writing, under oath, to the Tax Commissioner, in the form prescribed by the Tax
28 Commissioner, stating its total estimated purchases of such nonintoxicating beer during that
29 month, and at the same time shall pay the tax thereon levied by this article for such estimated
30 monthly purchase: Provided, That the Tax Commissioner may allow, or require, a brewer who

31 manufactures or produces nonintoxicating beer outside this state to file the required report and
32 pay the required tax on behalf of its distributor or distributors. Any brewer or distributor or operator
33 of a brewpub who files a report under this subsection may adjust its monthly estimated sales or
34 purchases or production report or reports by filing amended reports by the twenty-fifth day of the
35 reporting month.

36 (c) Every brewer or distributor or operator of a brewpub who files a report under subsection
37 (b) of this section shall file a final monthly report of said sales or purchases or production, in a
38 form and at a time prescribed by the Tax Commissioner, stating actual nonintoxicating beer sales,
39 purchases, or production and other information which the Tax Commissioner may require, and
40 shall include a remittance for any barrel tax owed for actual sales or purchases or production
41 made in excess of the amount estimated for that month.

42 (d) Any brewer or distributor or operator of a brewpub who files a report pursuant to
43 subsection (b) of this section reflecting an underestimation of twenty-five percent or more of actual
44 sales or purchases or production of nonintoxicating beer as shown by the report filed pursuant to
45 subsection (c) of this section shall be assessed a penalty of one percent of the total taxes due in
46 such prior month.

47 (e) Brewers and distributors and operators of brewpubs shall keep all records which relate
48 to the sale or purchase in this state of nonintoxicating beer for a period of three years unless
49 written approval for earlier disposal is granted by the Tax Commissioner.

50 (f) Brewpubs shall keep such records as required by the federal government and may, in
51 lieu of the recordkeeping and reporting requirements contained in subsections (a) through (e) of
52 this section, file copies of the federal reports contemporaneously with the Tax Commissioner at
53 the time of such filings with the federal government. The filing of duplicate copies of the federal
54 reports with the State Tax Commissioner shall be deemed as compliance with subsections (a)
55 through (e) of this section.

ARTICLE 17. TOBACCO PRODUCTS EXCISE TAX ACT.

§11-17-4b. Levy of tax on e-cigarette liquid; definitions; rate; invoice; report; payment; authority of the Tax Commissioner to inspect and examine witnesses; presumption; bond.

1 (a) *Definitions.* — When used in this section, words, terms and phrases defined in this
2 subsection, and any variations thereof required by the context, have the meaning ascribed to
3 them in this subsection, except where the context indicates a different meaning is intended.

4 (1) “E-cigarette” means an electrical or electronic device that provides a smoke, vapor,
5 fog, mist, gas or aerosol suspension of nicotine or another substance that, when used or inhaled,
6 simulates the activity of smoking. The term e-cigarette includes, but is not limited to, a device that
7 is composed of a heating element, battery or electrical or electronic circuit, or a combination of
8 heating element, battery and electrical or electronic circuit, which works in combination with e-
9 liquid to produce an inhalable product. The term e-cigarette includes, but is not limited to, any so
10 designed, or similarly designed, product that is manufactured, distributed, marketed or sold as an
11 e-cigarette, e-cigar, e-pipe or under any other name or descriptor. The term “simulates the activity
12 of smoking”, in the context of this definition, means replicating, mimicking or reproducing an
13 experience similar to inhaling, or otherwise drawing into the mouth or nose, or exhaling the smoke
14 or combustion product of burning tobacco or any other product or material that can be used in a
15 similar fashion.

16 (2) “E-cigarette liquid” means any of the liquids or liquid mixtures used in e-cigarettes and
17 is also known as e-juice, e-fluid, e-liquid or e-liquid product. E-cigarette liquid includes e-cigarette
18 liquid mixing kits and e-cigarette liquid mixing kit components. When used in, or with, an e-
19 cigarette, e-cigarette liquid is vaporized or otherwise converted into an inhalable product. E-
20 cigarette liquid may or may not include, without limitation, propylene glycol, vegetable glycerin,
21 nicotine from any source or flavorings.

22 (b) *Levy of tax; rate.* —

23 (1) On and after July 1, 2016, an excise tax is levied and imposed on sales of e-cigarette

24 liquid at the rate of 7.5 cents per milliliter or fraction thereof, or if not sold, then at the same rate
25 upon the use by the wholesaler or dealer. For purposes of this article, any distributor, dealer,
26 subjobber, subjobber dealer, retailer or any other person that imports or transports e-cigarette
27 liquids into this state, or that causes e-cigarette liquids to be imported or transported into this
28 state, is hereby deemed to be a wholesaler for purposes of this section and is liable for the tax
29 imposed under this article. No wholesaler or other person may purchase e-cigarette liquids from
30 any seller not approved by the Tax Commissioner. E-cigarette liquid mixing kits and e-cigarette
31 liquid mixing kit components shall be taxed in accordance with the amount of e-cigarette liquid, in
32 milliliters, that can be produced by or from the kit or components thereof, as determined by the
33 Tax Commissioner.

34 (2) Only one sale of e-cigarette liquid shall be used in computing the amount of tax due
35 under this section.

36 (c) *How tax paid; invoice required; reports required; due date; records to be kept.* —

37 (1) The tax imposed in this section on e-cigarette liquid shall be paid using an invoice
38 method prescribed by the Tax Commissioner.

39 (2) The tax will be paid on any and all e-cigarette liquid coming into the state for the
40 purpose of sale or use in this state on and after July 1, 2016.

41 (3) *Contents of delivery ticket or invoice.* — Unless otherwise permitted in writing by the
42 Tax Commissioner, each delivery ticket or invoice for each purchase or sale of e-cigarette liquid
43 must be recorded upon a serially numbered invoice showing:

44 (A) The name and address of the seller and the purchaser;

45 (B) The point of delivery;

46 (C) The date;

47 (D) (i) The number of e-cigarette cartridges, apparatus, containers or other devices; (ii)
48 the quantity in milliliters of each cartridge, apparatus, container or other device; (iii) the wholesale
49 price of each e-cigarette cartridge, apparatus, container or other device delivered in this state; or

50 (iv) if sold outside of a cartridge or other device or container, the total quantity in milliliters of e-
51 cigarette liquid not in cartridges, apparatus or other device or container delivered in this state and
52 the wholesale price of the e-cigarette liquid;

53 (E) The invoice must either set out the amount of tax imposed by this article separately on
54 the invoice or the invoice may instead indicate that the tax imposed under this article is included
55 in the total price; and

56 (F) Any other information required by the Tax Commissioner.

57 (4) *Reports and payments due date.* — On or before the fifteenth day of each month,
58 manufacturers, importers, every place of business as defined in this article, retail dealers,
59 subjobbers, vending machine operators and wholesale dealers and their agents, shall file a report
60 covering the business transacted in the previous month providing any information the Tax
61 Commissioner determines necessary for the ascertainment or assessment of the taxes imposed
62 by this article. Reports shall be signed under penalty of perjury and be in a form as prescribed by
63 the Tax Commissioner. The amount of tax shown to be due on the monthly report, if any, shall be
64 remitted on or before the due date of the monthly report. The first report due for e-liquid sales is
65 August 15, 2016, for the sales completed in July 2016.

66 (5) *Reports required.* — The reports prescribed in this article are required, although a tax
67 may not be due or no business transacted, for the period covered by the report. In the case of
68 any failure to file a report on the date prescribed for filing when no tax is due, unless it is shown
69 that the failure was due to reasonable cause, there is hereby imposed a penalty of \$25 for each
70 month or fraction of a month that such report is delinquent, until the report is filed, in addition to
71 any penalties imposed under section nineteen-a of this article.

72 (6) *Records.* — Each person required to file a report shall make and keep the records
73 necessary to substantiate the accuracy of the reports required by this section including, but not
74 limited to, records of inventories, receipts, disbursements and sales. Records shall be retained
75 for a period of time not less than three years from the time the report is due or the time when the

76 report is filed, whichever is later.

77 (d) *Inspection of records and stocks; examination of witnesses; registration of e-cigarette*
78 *sellers; presumption of nontax paid.* —

79 (1) The Tax Commissioner has the authority to inspect or examine the records, books and
80 papers, and any equipment or e-cigarette apparatus, and any stock of e-cigarette liquid kept in or
81 upon the premises of persons who sell, possess or store e-cigarette liquid, for the purpose of
82 determining the quantity and value of e-cigarette liquid acquired, on hand or disbursed, to verify
83 the truth and accuracy of any statement, return, form or report and to ascertain whether the tax
84 imposed by this article has been properly paid.

85 (2) In addition to the Tax Commissioner's powers set forth in article ten of this chapter, the
86 Tax Commissioner or the Tax Commissioner's agent may examine witnesses under oath in order
87 to ascertain the amount of taxes and reports due under this article. If a witness or person fails or
88 refuses to testify or grant access to records, books, papers, equipment or e-cigarette apparatus,
89 or any stock of e-cigarette liquid, necessary or useful to ascertain the amount of taxes and reports
90 due under this article, the Tax Commissioner shall certify the facts and names to the circuit court
91 of the county having jurisdiction of the party and the court shall issue a summons to the party to
92 appear before the Tax Commissioner at a place designated within the jurisdiction of the court, on
93 a day fixed, to be continued as the occasion may require for good cause shown, to testify and
94 give evidence and to produce for inspection any books, records and papers that may be required
95 and to grant access to records, books, papers, equipment or e-cigarette apparatus, or any stock
96 of e-cigarette liquid, for the purpose of ascertaining the amount of tax and reports due, if any.

97 (3) Each wholesale dealer of e-cigarette liquid must register with the Tax Commissioner
98 and maintain a business registration certificate, showing the wholesale dealer of e-cigarette liquid
99 to be registered as a seller of tobacco products or seller of both cigarettes and tobacco products
100 prior to the sale or delivery of e-cigarette liquid to any retail dealer or subjobber in this state. A
101 wholesale dealer may sell tax-paid e-cigarette liquid only to another wholesaler or a retail dealer

102 or subjobber in this state. No person may purchase nontaxed e-cigarette liquid from any seller
103 not approved by the Tax Commissioner.

104 (4) Whenever e-cigarette liquid is found in the place of business of any retail dealer,
105 without evidence that the tax imposed by this section has been paid, it shall be presumed that the
106 e-cigarette liquid is kept on the premises in violation of this article.

107 (e) *Bond.* — The Tax Commissioner may require wholesalers, subjobbers or retail dealers
108 to file a continuous surety bond in an amount to be fixed by the Tax Commissioner but no less
109 than \$1,000. The bond shall be conditioned upon faithfully complying with the provisions of this
110 article including the filing of the returns and payment of all taxes prescribed by this article.

111 (f) *Administration and enforcement.* — The provisions of this article and articles nine and
112 ten of this chapter apply to administration and enforcement of the excise tax on e-cigarette liquid
113 in the same manner and to the same extent as they apply to administration and enforcement of
114 the excise tax on tobacco products, as imposed under this article.

115 (g) *Criminal sanctions.* — The criminal sanctions imposed in section nineteen-a of this
116 article are hereby imposed with equal force and application with relation to actions, transactions
117 and responsibilities prescribed under this section and under this article. For the purpose of
118 applying and interpreting the provisions of section nineteen-a of this article, the words “container
119 of tobacco products” shall be interpreted to mean and include the words “container of tobacco
120 products or e-cigarette liquid”.

121 (h) *Prospective Repeal and Replacement.* — The tax imposed in this section is repealed
122 and shall no longer be imposed starting on October 1, 2017, when it shall be replaced by
123 provisions of the revised sales, service and use tax imposed under article fifteen-c of this chapter;
124 *Provided, That tax liabilities, if any, arising under this section for periods prior to October 1, 2017,*
125 *shall be determined, administered, assessed and collected as if the tax imposed by this section*
126 *had not been repealed; and the rights and duties of taxpayers and the state shall be fully and*
127 *completely preserved.*

ARTICLE 19. SOFT DRINKS TAX.

§11-19-1. Definitions.

1 As used in this article:

2 (4) "Bottled soft drinks" ~~shall include~~ includes any and all nonalcoholic beverages, whether
3 carbonated or not, such as soda water, ginger ale, coca cola, lime cola, pepsicola, doctor pepper,
4 root beer, carbonated water, orangeade, lemonade, fruit juice when any plain or carbonated
5 water, flavoring or syrup is added, or any and all preparations commonly referred to as "soft
6 drinks" of whatever kind, which are closed and sealed in glass, plastic, paper, or any other type
7 of container, envelope, package or bottle, whether manufactured with or without the use of any
8 syrup. The term "bottled soft drinks" shall not include fluid milk to which no flavoring has been
9 added, or natural undiluted fruit juice or vegetable juice.

10 (2) "Natural undiluted fruit juice" ~~shall mean~~ means the liquid resulting from the pressing
11 of fruit with or without sweetener being added, or the liquid resulting from the reconstitution of
12 natural fruit juice concentrate by the restoration of water to dehydrated natural fruit juice with or
13 without sweetener being added.

14 (3) "Natural undiluted vegetable juice" ~~shall mean~~ means the liquid resulting from the
15 pressing of vegetables with or without sweetener being added or the liquid resulting from the
16 reconstitution of natural vegetable juice concentrate by the restoration of water to dehydrated
17 natural vegetable juice with or without sweetener being added.

18 (4) "Sweetener" ~~shall mean~~ means sugar only, artificial or natural, which singularly flavors
19 the taste of a natural undiluted fruit juice or natural undiluted vegetable juice.

20 (5) "Soft drink syrups and powders" ~~shall include~~ includes the compound mixture or the
21 basic ingredients, whether dry or liquid, practically and commercially usable in making, mixing or
22 compounding soft drinks by the mixing thereof with carbonated or plain water, ice, fruit, milk or
23 any other product suitable to make a soft drink, among such syrups being such products as coca
24 cola syrup, chero cola syrup, pepsicola syrup, doctor pepper syrup, root beer syrup, nu-grape

25 syrup, lemon syrup, vanilla syrup, chocolate syrup, cherry smash syrup, rock candy syrup, simple
26 syrup, chocolate drink powder, malt drink powder, or any other prepared syrups or powders sold
27 or used for the purpose of mixing soft drinks commercially at soda fountains, restaurants or similar
28 places as well as those powder bases prepared for the purpose of domestically mixing soft drinks
29 such as kool aid, oh boy drink, tip top, miracle aid and all other similar products.

30 (6) "Simple syrup" ~~shall mean~~ means the making, mixing, compounding or manufacturing,
31 by dissolving sugar and water or any other mixtures that will create simple syrup to which may or
32 may not be added concentrates or extracts.

33 (7) "Person" ~~shall mean~~ means and ~~include~~ includes an individual, firm, partnership,
34 association or corporation.

35 (8) "Wholesale dealer" includes only those persons who sell any bottled soft drink or soft
36 drink syrup to retail dealers for the purpose of resale.

37 (9) "Retail dealer" includes every person other than a wholesale dealer mixing, making,
38 compounding or manufacturing any drink from a soft drink syrup or powder base, or a person
39 selling such syrup or powder.

40 (10) "Distributor" ~~shall mean~~ means any person who manufactures, bottles, produces or
41 purchases for sale to retail dealers any bottled soft drink or soft drink syrup.

42 (11) "Commissioner" means the State Tax Commissioner, and where the meaning of the
43 context requires, all deputies and employees duly authorized by him or her.

§11-19-2. Excise tax on bottled soft drinks, syrups and dry mixtures; disposition thereof.

1 (a) For the purpose of providing revenue for the construction, maintenance and operation
2 of a four-year school of medicine, dentistry and nursing of West Virginia University, and for other
3 purposes determined by Legislature, an excise tax is ~~hereby~~ levied and imposed ~~on and after~~
4 ~~midnight of June 30, 1951~~ effective January 1, 2018, upon the sale, use, handling or distribution
5 of all bottled soft drinks and all soft drink syrups, whether manufactured within or without this
6 state, as follows:

7 (1) On each bottled soft drink, a tax of ~~4¢~~ \$.05 on each sixteen and nine-tenths fluid ounces,
8 or fraction thereof, or on each one-half liter, or fraction thereof contained therein.

9 (2) On each gallon of soft drink syrup, a tax of ~~80¢~~ \$4, and in like ratio on each part gallon
10 thereof, or on each four liters of soft drink syrup a tax of ~~84¢~~ \$4.20 and in like ratio on each part
11 four liters thereof.

12 (3) On each ounce by weight of dry mixture or fraction thereof used for making soft drinks,
13 a tax of ~~4¢~~ \$.05 or on each 28.35 grams, or fraction thereof, a tax of ~~4¢~~ \$.05.

14 (b) Any person manufacturing or producing within this state any bottled soft drink or soft
15 drink syrup for sale within this state and any distributor, wholesale dealer or retail dealer or any
16 other person who is the original consignee of any bottled soft drink or soft drink syrup
17 manufactured or produced outside this state, or who brings such drinks or syrups into this state,
18 ~~shall be~~ is liable for the excise tax ~~hereby~~ imposed. The excise tax ~~hereby imposed shall~~ may not
19 be collected more than once in respect to any bottled soft drink or soft drink syrup manufactured,
20 sold, used or distributed in this state.

21 (c) ~~All~~ Twenty percent of the revenue collected by the commissioner under the provisions
22 of this article, less ~~such~~ the costs of administration as are hereinafter provided for, shall be paid
23 each year by him or her into a special Medical School Fund, which is ~~hereby~~ created in the State
24 Treasury, to be used solely for the construction, maintenance and operation of a four-year school
25 of medicine, dentistry and nursing, as otherwise provided by law, and the remainder of such
26 revenue collected under the provisions of this article in each year shall be remitted to the general
27 fund.

28 (d) For all periods prior to January 1, 2018, the provisions of this section before their
29 amendment in the year 2017, shall be administered and enforced according to their terms as they
30 existed before January 1, 2018, and the rights and duties of taxpayers and the state shall be
31 determined and applied according to such terms which are fully and completely preserved for
32 such prior periods.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-4g. Rate of tax – Taxable years beginning on and after January 1, 2018, ultimate repeal as of January 1, 2032, preservation for prior periods.

1 For taxable years beginning on and after January 1, 2018, the tax imposed by this article
2 shall apply uniformly, to the West Virginia taxable income of every individual, of every husband
3 and wife who file a joint return under this article and of every estate and trust, at the rate of two
4 and five tenths percent: *Provided*, That if, for any taxable year thereafter, the combined balance
5 of funds in the Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve
6 Fund - Part B established in section twenty, article two, chapter eleven-b of this code, as of June
7 30 of the preceding calendar year, exceeds fifteen percent of the general revenue fund budgeted
8 for the fiscal year ending on that date, the rate of the tax imposed by this article for the tax years
9 beginning on or after the first day of January next following such date, shall be reduced by one-
10 tenth of one percentage point for each \$50,000,000 by which the actual collections of the revised
11 sales, service and use tax, imposed under article fifteen-c of this chapter, exceed \$2,400,000,000
12 for the fiscal year ending six months prior to January 1 until the rate of the tax imposed by this
13 article is zero percent: *Provided, however*, That, once the rate of the tax imposed by this article
14 has been reduced pursuant to this section, that rate shall not again be raised: *Provided further*,
15 That each and every provision of this article is repealed for all tax periods beginning and after
16 January 1 of the first year in which the rate of the tax is zero percent: *And provided further*, That,
17 that tax liabilities, if any, arising for taxable periods prior to the date the tax is thus repealed, shall
18 be determined, administered, assessed and collected as if the tax imposed by this article had not
19 been repealed; and the rights and duties of taxpayers and the state shall be fully and completely
20 preserved.

§11-21-8a. Credit for qualified rehabilitated buildings investment.

1 A credit against the tax imposed by the provisions of this article shall be allowed as follows:
2 Certified historic structures. -- For certified historic structures, the credit is equal to ten

3 percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United
4 States Code, as amended: Provided, That for qualified rehabilitation expenditures made after
5 June 30, 2017, the credit allowed by this section is equal to twenty-five percent of the qualified
6 rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United States Code, as
7 amended. This credit is available for both residential and nonresidential buildings located in this
8 state, that are reviewed by the West Virginia Division of Culture and History and designated by
9 the national park service, United States department of the interior as "certified historic structures,"
10 and further defined as a "qualified rehabilitated building," as defined under §47(c)(1), Title 26 of
11 the United States Code, as amended.

§11-21-12. West Virginia adjusted gross income of resident individual.

1 (a) *General.* -- The West Virginia adjusted gross income of a resident individual means his
2 or her federal adjusted gross income as defined in the laws of the United States for the taxable
3 year with the modifications specified in this section.

4 (b) *Modifications increasing federal adjusted gross income.* -- There shall be added to
5 federal adjusted gross income unless already included therein the following items:

6 (1) Interest income on obligations of any state other than this state or of a political
7 subdivision of any other state unless created by compact or agreement to which this state is a
8 party;

9 (2) Interest or dividend income on obligations or securities of any authority, commission
10 or instrumentality of the United States, which the laws of the United States exempt from federal
11 income tax but not from state income taxes;

12 (3) Any deduction allowed when determining federal adjusted gross income for federal
13 income tax purposes for the taxable year that is not allowed as a deduction under this article for
14 the taxable year;

15 (4) Interest on indebtedness incurred or continued to purchase or carry obligations or
16 securities the income from which is exempt from tax under this article, to the extent deductible in

17 determining federal adjusted gross income;

18 (5) Interest on a depository institution tax-exempt savings certificate which is allowed as
19 an exclusion from federal gross income under Section 128 of the Internal Revenue Code, for the
20 federal taxable year;

21 (6) The amount of a lump sum distribution for which the taxpayer has elected under
22 Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for
23 federal income tax purposes; and

24 (7) Amounts withdrawn from a medical savings account established by or for an individual
25 under section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article
26 sixteen of said chapter that are used for a purpose other than payment of medical expenses, as
27 defined in those sections.

28 (c) *Modifications reducing federal adjusted gross income.* -- There shall be subtracted from
29 federal adjusted gross income to the extent included therein:

30 (1) Interest income on obligations of the United States and its possessions to the extent
31 includable in gross income for federal income tax purposes;

32 (2) Interest or dividend income on obligations or securities of any authority, commission
33 or instrumentality of the United States or of the State of West Virginia to the extent includable in
34 gross income for federal income tax purposes but exempt from state income taxes under the laws
35 of the United States or of the State of West Virginia, including federal interest or dividends paid
36 to shareholders of a regulated investment company, under Section 852 of the Internal Revenue
37 Code for taxable years ending after the thirtieth day of June, one thousand nine hundred eighty-
38 seven;

39 (3) Any amount included in federal adjusted gross income for federal income tax purposes
40 for the taxable year that is not included in federal adjusted gross income under this article for the
41 taxable year;

42 (4) The amount of any refund or credit for overpayment of income taxes imposed by this

43 state, or any other taxing jurisdiction, to the extent properly included in gross income for federal
44 income tax purposes;

45 (5) Annuities, retirement allowances, returns of contributions and any other benefit
46 received under the West Virginia Public Employees Retirement System, the West Virginia State
47 Teachers Retirement System and all forms of military retirement, including regular armed forces,
48 reserves and National Guard, including any survivorship annuities derived therefrom, to the extent
49 includable in gross income for federal income tax purposes: *Provided*, That notwithstanding any
50 provisions in this code to the contrary this modification shall be limited to the first two thousand
51 dollars of benefits received under the West Virginia Public Employees Retirement System, the
52 West Virginia State Teachers Retirement System and, including any survivorship annuities
53 derived therefrom, to the extent includable in gross income for federal income tax purposes for
54 taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-
55 six; and the first two thousand dollars of benefits received under any federal retirement system to
56 which Title 4 U.S.C. §111 applies: *Provided, however*, That the total modification under this
57 paragraph shall not exceed two thousand dollars per person receiving retirement benefits and
58 this limitation shall apply to all returns or amended returns filed after the last day of December,
59 one thousand nine hundred eighty-eight;

60 (6) Retirement income received in the form of pensions and annuities after the thirty-first
61 day of December, one thousand nine hundred seventy-nine, under any West Virginia police, West
62 Virginia Firemen's Retirement System or the West Virginia State Police Death, Disability and
63 Retirement Fund, the West Virginia State Police Retirement System or the West Virginia Deputy
64 Sheriff Retirement System, including any survivorship annuities derived from any of these
65 programs, to the extent includable in gross income for federal income tax purposes;

66 (7) (A) For taxable years beginning after the thirty-first day of December, two thousand,
67 and ending prior to the first day of January, two thousand three, an amount equal to two percent
68 multiplied by the number of years of active duty in the armed forces of the United States of

69 America with the product thereof multiplied by the first thirty thousand dollars of military retirement
70 income, including retirement income from the regular armed forces, reserves and National Guard
71 paid by the United States or by this state after the thirty-first day of December, two thousand,
72 including any survivorship annuities, to the extent included in gross income for federal income tax
73 purposes for the taxable year.

74 (B) For taxable years beginning after the thirty-first day of December, two thousand two,
75 the first twenty thousand dollars of military retirement income, including retirement income from
76 the regular armed forces, reserves and National Guard paid by the United States or by this state
77 after the thirty-first day of December, two thousand two, including any survivorship annuities, to
78 the extent included in gross income for federal income tax purposes for the taxable year: Provided,
79 That for taxable years beginning after December 31, 2017, the full amount of the military
80 retirement income, including retirement income from the regular armed forces, reserves and
81 National Guard paid by the United States or by this state, including any survivorship annuities, to
82 the extent included in gross income for federal income tax purposes for the taxable year.

83 (C) In the event that any of the provisions of this subdivision are found by a court of
84 competent jurisdiction to violate either the Constitution of this state or of the United States, or is
85 held to be extended to persons other than specified in this subdivision, this subdivision shall
86 become null and void by operation of law.

87 (8) Federal adjusted gross income in the amount of eight thousand dollars received from
88 any source after the thirty-first day of December, one thousand nine hundred eighty-six, by any
89 person who has attained the age of sixty-five on or before the last day of the taxable year, or by
90 any person certified by proper authority as permanently and totally disabled, regardless of age,
91 on or before the last day of the taxable year, to the extent includable in federal adjusted gross
92 income for federal tax purposes: *Provided,* That if a person has a medical certification from a prior
93 year and he or she is still permanently and totally disabled, a copy of the original certificate is
94 acceptable as proof of disability. A copy of the form filed for the federal disability income tax

95 exclusion is acceptable: *Provided, however, That:*

96 (i) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this
97 subsection is eight thousand dollars per person or more, no deduction shall be allowed under this
98 subdivision; and

99 (ii) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this
100 subsection is less than eight thousand dollars per person, the total modification allowed under
101 this subdivision for all gross income received by that person shall be limited to the difference
102 between eight thousand dollars and the sum of modifications under subdivisions (1), (2), (5), (6)
103 and (7) of this subsection;

104 (9) Federal adjusted gross income in the amount of eight thousand dollars received from
105 any source after the thirty-first day of December, one thousand nine hundred eighty-six, by the
106 surviving spouse of any person who had attained the age of sixty-five or who had been certified
107 as permanently and totally disabled, to the extent includable in federal adjusted gross income for
108 federal tax purposes: *Provided, That:*

109 (i) Where the total modification under subdivisions (1), (2), (5), (6), (7) and (8) of this
110 subsection is eight thousand dollars or more, no deduction shall be allowed under this subdivision;
111 and

112 (ii) Where the total modification under subdivisions (1), (2), (5), (6), (7) and (8) of this
113 subsection is less than eight thousand dollars per person, the total modification allowed under
114 this subdivision for all gross income received by that person shall be limited to the difference
115 between eight thousand dollars and the sum of subdivisions (1), (2), (5), (6), (7) and (8) of this
116 subsection;

117 (10) Contributions from any source to a medical savings account established by or for the
118 individual pursuant to section twenty, article fifteen, chapter thirty-three of this code or section
119 fifteen, article sixteen of said chapter, plus interest earned on the account, to the extent includable
120 in federal adjusted gross income for federal tax purposes: *Provided, That* the amount subtracted

121 pursuant to this subdivision for any one taxable year may not exceed two thousand dollars plus
122 interest earned on the account. For married individuals filing a joint return, the maximum
123 deduction is computed separately for each individual;

124 (11) For the two thousand six taxable year only, severance wages received by a taxpayer
125 from an employer as the result of the taxpayer's permanent termination from employment through
126 a reduction in force and through no fault of the employee, not to exceed thirty thousand dollars.
127 For purposes of this subdivision:

128 (i) The term "severance wages" means any monetary compensation paid by the employer
129 in the taxable year as a result of permanent termination from employment in excess of regular
130 annual wages or regular annual salary;

131 (ii) The term "reduction in force" means a net reduction in the number of employees
132 employed by the employer in West Virginia, determined based on total West Virginia employment
133 of the employer's controlled group;

134 (iii) The term "controlled group" means one or more chains of corporations connected
135 through stock ownership with a common parent corporation if stock possessing at least fifty
136 percent of the voting power of all classes of stock of each of the corporations is owned directly or
137 indirectly by one or more of the corporations and the common parent owns directly stock
138 possessing at least fifty percent of the voting power of all classes of stock of at least one of the
139 other corporations;

140 (iv) The term "corporation" means any corporation, joint-stock company or association and
141 any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a
142 certificate of interest or ownership or similar written instrument; and

143 (12) For taxable years beginning after December 31, 2017 social security benefits paid by
144 the Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as
145 provided in §42 U.S.C. 401 et. seq. or as Supplemental Security Income for the Aged, Blind, and
146 Disabled as provided in §42 U.S.C. 1381 et. seq., to the extent included in gross income for

147 federal income tax purposes for the taxable year; and

148 ~~(42)~~ (13) Any other income which this state is prohibited from taxing under the laws of the
149 United States.

150 (d) *Modification for West Virginia fiduciary adjustment.* -- There shall be added to or
151 subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as
152 beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under
153 section nineteen of this article.

154 (e) *Partners and S corporation shareholders.* -- The amounts of modifications required to
155 be made under this section by a partner or an S corporation shareholder, which relate to items of
156 income, gain, loss or deduction of a partnership or an S corporation, shall be determined under
157 section seventeen of this article.

158 (f) *Husband and wife.* -- If husband and wife determine their federal income tax on a joint
159 return but determine their West Virginia income taxes separately, they shall determine their West
160 Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been
161 determined separately.

162 (g) *Effective date.* -- (1) Changes in the language of this section enacted in the year two
163 thousand shall apply to taxable years beginning after the thirty-first day of December, two
164 thousand.

165 (2) Changes in the language of this section enacted in the year two thousand two shall
166 apply to taxable years beginning after the thirty-first day of December, two thousand two.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-4. Imposition of primary tax and rate thereof; effective and termination dates.

1 *Primary tax.* -- (1) In the case of taxable periods beginning after the thirtieth day of June,
2 one thousand nine hundred sixty-seven, and ending prior to the first day of January, one thousand
3 nine hundred eighty-three, a tax is hereby imposed for each taxable year at the rate of six percent
4 per annum on the West Virginia taxable income of every domestic or foreign corporation engaging

5 in business in this state or deriving income from property, activity or other sources in this state,
6 except corporations exempt under section five.

7 (2) In the case of taxable periods beginning on or after the first day of January, one
8 thousand nine hundred eighty-three, and ending prior to the first day of July, one thousand nine
9 hundred eighty-seven, a tax is hereby imposed for each taxable year on the West Virginia taxable
10 income of every domestic or foreign corporation engaging in business in this state or deriving
11 income from property, activity or other sources in this state, except corporations exempt under
12 section five of this article, and any banks, banking associations or corporations, trust companies,
13 building and loan associations and savings and loan associations, at the rates which follow:

14 (A) On taxable income not in excess of fifty thousand dollars, the rate of six percent; and

15 (B) On taxable income in excess of fifty thousand dollars, the rate of seven percent.

16 (3) In the case of taxable periods beginning on or after the first day of July, one thousand
17 nine hundred eighty-seven, a tax is hereby imposed for each taxable year on the West Virginia
18 taxable income of every domestic or foreign corporation engaging in business in this state or
19 deriving income from property, activity or other sources in this state, except corporations exempt
20 under section five of this article, at the rate of nine and three-quarters percent. Beginning the first
21 day of July, one thousand nine hundred eighty-eight, and on each first day of July thereafter for
22 four successive calendar years, the rate shall be reduced by fifteen one hundredths of one percent
23 per year, with such rate to be nine percent on and after the first day of July, one thousand nine
24 hundred ninety-two.

25 (4) In the case of taxable periods beginning on or after the first day of January, two
26 thousand seven, a tax is hereby imposed for each taxable year on the West Virginia taxable
27 income of every domestic or foreign corporation engaging in business in this state or deriving
28 income from property, activity or other sources in this state, except corporations exempt under
29 section five of this article, at the rate of eight and three-quarters percent.

30 (5) In the case of taxable periods beginning on or after the first day of January, two

31 thousand nine, a tax is hereby imposed for each taxable year on the West Virginia taxable income
32 of every domestic or foreign corporation engaging in business in this state or deriving income
33 from property, activity or other sources in this state, except corporations exempt under section
34 five of this article, at the rate of eight and one-half percent.

35 (6) In the case of taxable periods beginning on or after the first day of January, two
36 thousand twelve, a tax is hereby imposed for each taxable year on the West Virginia taxable
37 income of every domestic or foreign corporation engaging in business in this state or deriving
38 income from property, activity or other sources in this state, except corporations exempt under
39 section five of this article, at the rate of seven and three-quarters percent: *Provided*, That the
40 reduction in tax authorized by this subsection shall be suspended if the combined balance of
41 funds as of the thirtieth day of June, two thousand eleven, in the Revenue Fund Shortfall Reserve
42 Fund and the Revenue Fund Shortfall Reserve Fund - Part B established in section twenty, article
43 two, chapter eleven-b of this code does not equal or exceed ten percent of the general revenue
44 fund budgeted for the fiscal year commencing the first day of July, two thousand eleven: *Provided*,
45 *however*, That the rate reduction schedule will resume in the calendar year immediately following
46 any subsequent fiscal year when the combined balance of funds as of the thirtieth day of June of
47 that fiscal year in the Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall
48 Reserve Fund - Part B next equals or exceeds ten percent of the general revenue fund budgeted
49 for the immediately succeeding fiscal year.

50 (7) In the case of taxable periods beginning on or after the first day of January, two
51 thousand thirteen, a tax is hereby imposed for each taxable year on the West Virginia taxable
52 income of every domestic or foreign corporation engaging in business in this state or deriving
53 income from property, activity or other sources in this state, except corporations exempt under
54 section five of this article, at the rate of seven percent: *Provided*, That the reduction in tax
55 authorized by this subsection shall be suspended for one calendar year subsequent to the
56 occurrence of the suspension of the reduction in tax authorized by subdivision (6) of this section:

57 *Provided, however,* That the reduction in tax on the first day of any calendar year authorized by
58 this subsection shall be suspended if the combined balance of funds as of the thirtieth day of June
59 of the preceding year in the Revenue Fund Shortfall Reserve Fund and the Revenue Fund
60 Shortfall Reserve Fund - Part B established in section twenty, article two, chapter eleven-b of this
61 code does not equal or exceed ten percent of the general revenue fund budgeted for the fiscal
62 year commencing the first day of July of the preceding year.

63 (8) In the case of taxable periods beginning on or after the first day of January, two
64 thousand fourteen, a tax is hereby imposed for each taxable year on the West Virginia taxable
65 income of every domestic or foreign corporation engaging in business in this state or deriving
66 income from property, activity or other sources in this state, except corporations exempt under
67 section five of this article, at the rate of six and one-half percent: *Provided,* That the reduction in
68 tax authorized by this subsection shall be suspended for one calendar year subsequent to the
69 occurrence of the suspension of the reduction in tax authorized by subdivision (7) of this section:
70 *Provided, however,* That the reduction in tax on the first day of any calendar year authorized by
71 this subsection shall be suspended if the combined balance of funds as of the thirtieth day of June
72 of the preceding year in the Revenue Fund Shortfall Reserve Fund and the Revenue Fund
73 Shortfall Reserve Fund - Part B established in section twenty, article two, chapter eleven-b of this
74 code does not equal or exceed ten percent of the general revenue fund budgeted for the fiscal
75 year commencing the first day of July of the preceding year.

76 (9) In the case of taxable periods beginning on and after January 1, 2018, a tax is hereby
77 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign
78 corporation engaging in business in this state or deriving income from property, activity or other
79 sources in this state, except corporations exempt under section five of this article, at a rate which,
80 until such rate is zero percent, shall be one percent lower than the percentage that was the rate
81 of such tax that applied to the immediately preceding taxable year: *Provided,* That the reduction
82 in the rate of tax on the first day of any calendar year authorized by this subsection shall be

83 suspended if either; (i) the rate imposed under article twenty-one of this chapter is greater than
84 zero percent or (ii) the combined balance of funds in the Revenue Fund Shortfall Reserve Fund
85 and the Revenue Fund Shortfall Reserve Fund - Part B established in section twenty, article two,
86 chapter eleven-b of this code, as of June 30 of the preceding year, does not equal or exceed ten
87 percent of the general revenue fund budgeted for the fiscal year commencing July 1 of the
88 preceding year, such rate reduction shall be postponed until the next subsequent taxable year,
89 following the first year thereafter in which both the same two said contingencies, herein otherwise
90 requiring suspension of the rate reduction, are next satisfied: *Provided*, That once the rate of the
91 tax imposed by this article has been reduced pursuant to this subsection, that rate shall not again
92 be raised, notwithstanding any such contingency.

§11-24-23a. Credit for qualified rehabilitated buildings investment.

1 A credit against the tax imposed by the provisions of this article shall be allowed as follows:
2 Certified historic structures. -- For certified historic structures, the credit is equal to ten
3 percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United
4 States Code, as amended: *Provided*, That for qualified rehabilitation expenditures made after
5 June 30, 2017, the credit allowed by this section is equal to twenty-five percent of the qualified
6 rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United States Code, as
7 amended. This credit is available for both residential and nonresidential buildings located in this
8 state that are reviewed by the West Virginia Division of Culture and History and designated by
9 the national park service, United States department of the interior as "certified historic building",
10 and further defined as a "qualified rehabilitated building", as defined under §47(c)(1), Title 26, of
11 the United States Code, as amended.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-17. Wholesale prices set by commissioner; retail licensees to purchase liquor from

state; transportation and storage; method of payment.

1 (a) The commissioner shall fix wholesale prices for the sale of liquor, other than wine, to
2 retail licensees. The commissioner shall sell liquor, other than wine, to retail licensees according
3 to a uniform pricing schedule. The commissioner shall obtain, if possible, upon request, any liquor
4 requested by a retail licensee and those permitted to manufacture and sell liquor pursuant to
5 section three, article four of this chapter.

6 (b) Wholesale prices shall be established in order to yield a net profit for the General
7 Revenue Fund of not less than ~~\$6,500,000~~ \$13,000,000 annually on an annual volume of
8 business equal to the average for the past three years. The net revenue derived from the sale of
9 alcoholic liquors shall be deposited into the General Revenue Fund in the manner provided in
10 section seventeen, article three of this chapter.

11 (c) Notwithstanding any provision of this code to the contrary, the ~~commissioner~~
12 Legislature shall specify the maximum wholesale markup percentage which may be applied to
13 the prices paid by the commissioner for all liquor, other than wine, in order to determine the prices
14 at which all liquor, other than wine, will be sold to retail licensees: Provided, That on and after
15 January 1, 2018, and until adjusted by the Legislature, the maximum wholesale markup
16 percentage applied to the prices paid by the commission for all liquor, other than wine, shall be
17 thirty-six percent. A retail licensee shall purchase all liquor, other than wine, for resale in this state
18 only from the commissioner, and the provisions of sections twelve and thirteen, article six of this
19 chapter shall not apply to the transportation of the liquor: *Provided, however,* That a retail licensee
20 shall purchase wine from a wine distributor who is duly licensed under article eight of this chapter.
21 All liquor, other than wine, purchased by retail licensees shall be stored in the state at the retail
22 outlet or outlets operated by the retail licensee: *Provided, however, further,* That the
23 commissioner, in his or her discretion, may upon written request permit a retail licensee to store
24 liquor at a site other than the retail outlet or outlets.

25 (d) The sale of liquor by the commissioner to retail licensees shall be paid by electronic

26 funds transfer which shall be initiated by the commissioner on the business day following the retail
27 licensee's order or by money order, certified check or cashier's check which shall be received by
28 the commissioner at least twenty- four hours prior to the shipping of the alcoholic liquors:
29 *Provided, That* if a retail licensee posts with the commissioner an irrevocable letter of credit or
30 bond with surety acceptable to the commissioner from a financial institution acceptable to the
31 commissioner guaranteeing payment of checks, then the commissioner may accept the retail
32 licensee's checks in an amount up to the amount of the letter of credit.

33 (e) (1) A retail licensee may not sell liquor to persons licensed under the provisions of
34 article seven of this chapter at less than one hundred ten percent of the retail licensee's cost as
35 defined in section six, article eleven-a, chapter forty-seven of this code.

36 (2) A retail licensee may not sell liquor to the general public at less than one hundred-ten
37 percent of the retail licensee's cost as defined in section six, article eleven-a, chapter forty-seven
38 of this code.

Note: The purpose of this bill is to preserve the municipal sales and use taxes, contingently reduce the rate of the severance taxes on certain natural resource production, prospectively balance the rate of the severance tax on coal production, provide a refundable credit based on the earned income of low-income workers, provide a refundable credit based on the fixed income of low-income senior citizens, prospectively repeal the consumer sales and service tax, the use tax and the excise tax on e-cigarette liquid, enact the revised sales, service and use tax law, prospectively increase the rates of tax on the sale of non-intoxicating beer and soft drinks, reduce, make uniform and phase down the rate of, and ultimately repeal the personal income tax, prospectively increase the personal income tax credit for qualified rehabilitated building investments, exempt all social security retirement, survivors' and disability income and all retirement income for military service from the personal income tax, phase down the rate, and ultimately repeal the corporation net income tax, prospectively increase the corporation net income tax credit for qualified rehabilitated building investments and prospectively increase state profits from wholesale liquor sales.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.